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## **THE ART OF WAR: THE PROTECTION OF CULTURAL PROPERTY DURING THE "SIEGE" OF SARAJEVO (1992-95)**

### **I. INTRODUCTION**

Throughout the night of August 25, 1992, shells from Serb gunners fell on the National and University Library of Bosnia and Herzegovina in Sarajevo. The attack set off a blaze fueled by a collection representing hundreds of years of Bosnian history and culture. Librarians and community members, risking sniper fire, formed a human chain to move books to safety.<sup>1</sup> Despite emergency efforts, ninety percent of the collection was ash by daybreak.<sup>2</sup> Unfortunately, this incident was not unique. The destruction of cultural artifacts during the "Siege" of Sarajevo was a loss not only to Bosnia,<sup>3</sup> but also to the heritage of the world which now suffers a gap that cannot be closed.

"Traditional" warfare, or battle between sovereign states, is becoming less common. Increasingly, conflicts are erupting between different ethnic or religious groups whose cultures, while clashing, are intricately linked. The cases of the former Yugoslavia and, more recently, the reign of the Taliban in Afghanistan, show that aggressors are not necessarily motivated by the acquisition of land, resources, and power. Instead, the aim is increasingly to raze all evidence of an inconvenient past in order to clear the way for a rewritten cultural narrative.

This was certainly the case in the former Yugoslavia where the widespread destruction of Bosnia's multiethnic cultural heritage was the result of deliberate targeting by Serb forces that flouted all international humanitarian law. As András Riedlmayer, bibliographer at the Harvard University Fine Arts Library, says,

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1. Ramona Koval, *The Sarajevo Haggadah*, BRICK, Winter 2002.

2. *Id.*

3. Unless otherwise noted, "Bosnia," "Bosnia-Herzegovina," and "Bosnia and Herzegovina" all refer to the Republic of Bosnia and Herzegovina.

“in Bosnia and Herzegovina, rubble signifie(d) national extremists hard at work to eliminate not only human beings and living cities but also to erase all memory of the past.”<sup>4</sup>

This purposeful destruction is the new reality of cultural property<sup>5</sup> protection.

However, most of the effort in this field is based on outdated notions of warfare and reflects an optimism that international law

4. András Riedlmayer, *Bosnia's Multicultural Heritage and Its Destruction*, Address Before the Carnegie Endowment for International Peace (May 2, 1994), at <http://www.kakarigi.net/manu/ceip2.htm> (last visited Dec. 11, 2002).

5. In this examination, the definition of “cultural property” established in the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict will be used. The three categories encompassed in this definition are:

Movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books of archives or of reproductions of the property defined above;

Buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in subparagraph (a) such as museums, large libraries and depositories or archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in subparagraph (a);

Centers containing a large amount of cultural property as defined in subparagraphs (a) and (b), to be known as ‘centers containing monuments.’”

Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, art. 1, 249 U.N.T.S. 240, 242 [hereinafter 1954 Hague Convention]

Sometimes a distinction is made between “cultural property” and “cultural heritage,” with the former only encompassing material objects and the latter meaning the intangible (folklore or skills, for example). This study, however, deals exclusively with the physical. Therefore, when the term “heritage” is used, it is acting as a synonym for “property” and refers to tangibles like books, artworks, monuments, and buildings. See Markus M. Müller, *Cultural Heritage Protection: Legitimacy, Property, and Functionalism*, 7 INTERNATIONAL JOURNAL OF CULTURAL PROPERTY 395, 396 (1998).

will ultimately prevail. This may happen yet but, until then, there must be much more focus on practical aspects of protection. This article uses the case study of Sarajevo<sup>6</sup> during the War in the former Yugoslavia to critically examine the effectiveness of current cultural property protection efforts. After providing some background on the philosophy behind cultural property protection in Section II, this article will examine the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (Hague Convention), its shortcomings, and its application to the conflict in the former Yugoslavia. Section III will examine the extent and nature of cultural destruction during the War and the experience of cultural institutions in Sarajevo. This information was gathered from interviews conducted in Sarajevo with museum directors and cultural leaders in January 2003. The efforts of the United Nations Education, Scientific, and Cultural Organization (UNESCO), which is the primary inter-governmental organization (IGO) charged with protecting cultural property will be examined in Section IV. The effectiveness of outside aid from other international organizations will then be discussed in the fifth section. Section VI summarizes the actions of other international organizations during cultural warfare. This article concludes with recommendations for improving protection efforts, and provides a basis for re-envisioning the existing paradigm of how cultural property is protected in times of crisis.

## II. PHILOSOPHY OF PROTECTING CULTURAL PROPERTY

Invariably, the first objection to focusing on cultural heritage protection during armed conflict is that resources should not be diverted from more pressing humanitarian issues. Choosing between saving lives and a building is a clear decision. However,

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6. There are many case studies that could be used to illustrate the destruction wrought during the wars in the former Yugoslavia, including Dubrovnik, Mostar, and Kosovo. This study will bring in supporting examples when appropriate, but aims for depth (rather than breadth) by primarily using the example of actions taken in Sarajevo – a city under siege for over three years (1992 – 1995).

cultural symbols are the manifestation of a society's beliefs and history and are an essential element of national and ethnic identity. During war, purposeful "widespread destruction has the painful virtue of enlarging notions of the heritage to all objects in which a people see carried the values of their culture, however new or old, however outstanding or run-of-the-mill these objects are."<sup>7</sup> The destruction of cultural property is a very effective psychological tool because:

if heritage is effectively destroyed that is a loss for all groups, and it becomes an act of rewriting history – in the mono-ethnic direction, a means of suppressing the past, and depriving people of the tools for understanding it. It also annihilates pride (there is nothing more to show).<sup>8</sup>

Cultural property protections "recognize the intimate connectedness between humans and the objects they produce, and the deep values and symbols people imbue in material culture."<sup>9</sup> In this way, they protect people as well as their material culture.<sup>10</sup> The importance of cultural identity is also embodied in the Universal Declaration of Human Rights, which contains the provision that "everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits."<sup>11</sup> Unquestionably, a link

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7. Colin Kaiser, *War Damage to the Cultural Heritage in Croatia and Bosnia-Herzegovina*, EUR. PARL. ASSEMB. Doc. No. 6756 (1993), 13. This report was the first of its kind produced during the war.

8. E-mail from Colin Kaiser, UNESCO Representative in Sarajevo, to Megan Kossiakoff, author (Feb. 25 2003, 11:52:58 CST) (on file with author) [hereinafter Email from Colin Kaiser].

9. Chip Colwell-Chantaphonh & John Piper, *War and Cultural Property: The 1954 Hague Convention and the Status of U.S. Ratification*, 10 INTERNATIONAL JOURNAL OF CULTURAL PROPERTY 217, 226 (2001).

10. Frank G. Fechner, *The Fundamental Aims of Cultural Property Law*, 7 INTERNATIONAL JOURNAL OF CULTURAL PROPERTY 376, 378 (1998).

11. *Universal Declaration of Human Rights*, G.A. Res. 217A(III), U.N. GAOR, at art. 27 (1948), available at <http://www.un.org/Overview/rights.html> (last visited Feb. 19, 2004).

exists between heritage destruction and human rights violations because “where human rights are not respected, cultural property is usually not protected. The reverse holds true as well – destruction of the cultural heritage often means an attack on culture and cultural identity as well.”<sup>12</sup> The goal of protecting the cultural heritage during a conflict involving ethnic cleansing is to keep the anchors of a society in place, and to deprive the aggressor of the opportunity to change history. It becomes a form of resistance that builds on more traditional humanitarian interventions, which offer only survival. Jakob Finci, the President of Sarajevo’s Jewish organization, La Benevolencija, put this well when he said that “art is something human, even in the worst situations, it’s important to preserve a human face.”<sup>13</sup>

### III. LEGAL PROTECTIONS: THE HAGUE CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT (1954)

Most of the effort in cultural property protection is directed at bringing the combined pressure of the international community to bear on offenders through international law, which has the potential “normative power to shape common understandings of what is right and wrong.”<sup>14</sup> Since the Peace of Westphalia in 1648, warring parties have made provisions to safeguard each other’s property.<sup>15</sup> These protections evolved slowly to confront the

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12. Müller, *supra* note 5, at 405.

13. Interview with Jakob Finci, Head of the Jewish Community of Sarajevo, in Sarajevo, Republic of Bosnia and Herzegovina (Jan. 21, 2003) [hereinafter Finci].

14. Müller, *supra* note 5, at 400.

15. JIRI TOMAN, THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT: COMMENTARY ON THE CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT AND ITS PROTOCOL, SIGNED ON 14 MAY 1954 IN THE HAGUE, AND ON OTHER INSTRUMENTS OF INTERNATIONAL LAW CONCERNING SUCH PROTECTION 5 (Dartmouth Publishing and UNESCO 1996). The Peace of Westphalia, which ended the Thirty Years War, provided that looted objects should be returned to their place of origin. *Id.*

challenges posed by increasingly destructive methods of warfare.<sup>16</sup> During the course of World War II, however, it became clear that stronger laws urgently needed to be developed to prevent such widespread destruction from happening again.

At the beginning of the Second World War, the governments of Germany, France, Poland, and the United Kingdom gave their assurances that non-military targets would not be purposely attacked.<sup>17</sup> These rules of engagement, which were established at President Roosevelt's behest before the United States entered the war, were followed to a remarkable degree during the first years of battle.<sup>18</sup> This ended in March 1943, when the British test-bombed the historic and undefended German city of Lübeck.<sup>19</sup> Britain's move signaled a change in attitude for all parties involved. Cultural property became "fair game" as claims of "military necessity" now became applicable to almost all targets.

The resulting widespread destruction of cultural heritage during World War II provided a powerful impetus to develop comprehensive international laws that were strong enough to ensure that such devastation would not happen again. To this end, on May 14, 1954, thirty-seven states signed "The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict," which evolved out of earlier legal codes and the lessons learned from the wars of the twentieth-century's first half. This Convention maps out not only how belligerent forces should respectfully treat cultural property during conflict, but also the measures that must be taken by defending nations to ensure that its cultural property does not become a legitimate target. Its applicability is mostly limited, however, to conflicts involving

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16. For example, during World War I there were challenges enforcing the 1907 Hague Convention, which was the precursor to the 1954 Hague Convention, because military technology was not sufficiently advanced to prevent collateral damage. *Id.* at 14.

17. Patrick Boylan, *Review of The Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague Convention of 1954)*, UNESCO, at 32-33, UNESCO Doc. CLT-93/WS/12 (1993).

18. *Id.* at 34.

19. *Id.* at 35.

conventional weaponry. Even with its drawbacks, it is the most complete agreement for the protection of the cultural heritage during armed conflict to date.

All parties to the conflict in the former Yugoslavia were parties<sup>20</sup> to the 1954 Hague Convention, thus responsible for its implementation. The Socialist Federal Republic of Yugoslavia ratified the 1954 Hague Convention on February 13, 1956 and entered it into force on August 7, 1956. After the disintegration of the Yugoslav state began in 1991, the resulting nations succeeded to the Convention. It did not need to be separately re-ratified.<sup>21</sup> On April 27, 1992, the Federal Republic of Yugoslavia, which encompassed Serbia and Montenegro (the two states remaining in the union), informed the Director-General of UNESCO that "it would strictly abide by all the international obligations which the Socialist Federal Republic of Yugoslavia had assumed in the past."<sup>22</sup> After declaring independence, the Republic of Croatia succeeded to the Convention on July 6, 1993.<sup>23</sup> The Republic of Bosnia-Herzegovina's succession followed the next day, July 7, 1993. Thus, all parties involved in the conflict were under an obligation to adhere to the Convention in its entirety.<sup>24</sup>

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20. A state becomes a signatory when it indicates an intent to ratify a convention by signing it. However, a signatory is not bound by the convention until it ratifies or accedes to it. When it does so, it becomes a "member state" or "party" to the Convention. E-mail from Patty Gerstenblith, Professor, DePaul University College of Law, to Megan Kossiakoff, author (Sept. 6, 2003, 14:10:22 CST) (on file with author).

21. W. Hays Parks, The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, Address Before the Carnegie Endowment for International Peace (May 2, 1994), at <http://www.kakarigi.net/manu/ceip4.htm> (last visited Dec. 11, 2002).

22. Toman, *supra* note 15, at 451-52.

23. *Id.* at 449.

24. There is some overlap between the 1954 Hague Convention and Article 53 of Protocol I (for international conflicts) and Article 16 of Protocol II (relating to non-international conflicts and civil disputes) of the Geneva Conventions. Even States that have not signed the 1954 Hague Convention, but have ratified the additional protocols of the Geneva Convention, are bound to respect protected cultural heritage. However, they are not required to follow the specific procedures for enforcement outlined in the Hague Convention. The



According to a United Nations Commission of Experts that investigated the situation in the former Yugoslavia, both the 1954 Hague Convention and the Geneva Convention and Protocols were applicable in the conflict.<sup>25</sup> However, as Hays Parks, Chief of the International Law Branch of the Office of the Judge Advocate General of the Army during the war in the former Yugoslavia, says:

Most law – whether it is domestic or international, is negotiated or promulgated on the basis that it will assume that most people are law-abiding, and that there are good reasons for adhering to it . . . the conflict in the former Yugoslavia shows perhaps the worst of what people can do when they are bent on mischief. The law seldom is going to provide protection against the lawless. And that is one of the dilemmas that we have here.<sup>26</sup>

There was much discussion during the conflict about the applicability of the Hague Convention. In a 1995 report on its application of the Hague Convention, the Federal Republic of Yugoslavia wrote that “the real answers to the question of how the

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Geneva Convention Protocols contain no reference to a waiver of protection for military necessity – a major point of contention in the Hague Convention. In addition, Article 53 of Protocol I to the Geneva Convention, protects places of worship, regardless of their cultural “value.” Article 85 of Protocol I defines a “Grave Breach” to Article 53 as the willful destruction of property. This is significant because it provides an additional recourse to prosecute the destruction of cultural property as a war crime if perpetrators are not parties to the Hague Convention.

The 1954 Hague Convention adopted Article 3 of the 1949 Geneva Convention which defines the bounds of protection beyond the generally accepted definition of war, thus including armed conflicts, civil wars, independence efforts, etc. This has become increasingly important in the last few decades when the world has seemingly seen more “untraditional” than “traditional” conflicts. Boylan, *supra* note 17, at 43.

25. *Destruction of Cultural Property Report*, Interim Report of Commission on Experts, U.N. SCOR, Annex 11, U.N. Doc. S/1994/674/Add.2 (Vol. V) (1993).

26. Parks, *supra* note 21, at 1.

Hague Convention was applied can be best got if we ask how it was not applied, and even better, how it was abused.”<sup>27</sup> How, and to what extent, the Convention was applied shows its shortcomings. For this reason, several of its main provisions and how it was applied in this conflict will be examined in depth.

### *A. Main Provisions of the 1954 Hague Convention*

#### *1. Peacetime Preparations*

Parties to the 1954 Hague Convention are required to make peacetime preparations to safeguard cultural property before the potential for a conflict arises.<sup>28</sup> However, only the training and instruction of the military regarding the appropriate treatment of cultural property is specified in the Hague Convention. According to Article 7, military units should include cultural heritage specialists and be prepared to cooperate with cultural workers in the field.<sup>29</sup> Enforcing this provision would require that an infrastructure for cooperation between the military and cultural community be established in advance of any conflict.

Outside of this military measure, specific regulations for preparation were not included in the final version of the Convention. Examples of possible safeguards could include the establishment of safe shelters (“refuges”), the organization of transport for endangered property, and the establishment of a civilian service to carry out protection duties.<sup>30</sup> However, Parties have the discretion under the Convention to decide what preparation in peacetime entails and which properties are to be

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27. *Information on the Implementation of the Convention for the Protection of Cultural Property in the Event of Armed Conflict*, at 25, UNESCO Doc. CLT-95/WS/13 (1995) [hereinafter *1995 Implementation Reports*].

28. 1954 Hague Convention, *supra* note 5, 249 U.N.T.S. at art. 3.

29. *Id.* at 249 U.N.T.S. at art. 7.2.

30. For examples of preparatory measures undertaken by countries, see Boylan, *supra* note 17, at 71-73.

protected.<sup>31</sup> UNESCO is available for guidance on technical matters and to assist with organization.<sup>32</sup>

In general, peacetime preparations in Sarajevo were inadequate.<sup>33</sup> While basement storage was often made available, the removal of objects was generally delayed until the situation became critical. In many cases, this was too late. The psychological shift needed to accept the possibility of war seemed too difficult to make until it became an unavoidable reality. Serb authorities asserted that the provisions of the Convention specifying respect for cultural property were integrated into the regulations of the former JNA (Yugoslav People's Army) and that a series of lectures were organized for soldiers.<sup>34</sup>

## 2. *Special Emblem*

The designation of a distinctive emblem to identify cultural property was first discussed at the Brussels Conference of 1874. Article 17 of the "International Declaration Concerning the Laws and Customs of War," which was the unratified treaty written at the Conference, refers to the responsibility of a besieged party to "indicate the presence of such buildings (churches, hospitals, and buildings dedicated to art, science or charitable purposes) by distinctive and visible signs to be communicated to the enemy beforehand."<sup>35</sup> Subsequent conventions relating to cultural property protection contained similar provisions.<sup>36</sup>

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31. Toman, *supra* note 15, at 97.

32. 1954 Hague Convention, *supra* note 5, 249 U.N.T.S. at art. 23. Under the 1954 Hague Convention, UNESCO is not required to specifically earmark funds to assist countries in developing preparatory programs. Toman, *supra* note 15, at 64. This funding oversight was addressed in the 1999 Second Protocol. See discussion *infra* Section III (C)

33. See *infra* Section IV.

34. 1995 Implementation Reports, *supra* note 27, at 25.

35. Toman, *supra* note 15, at 177.

36. The 1935 Roerich Pact, which was ratified in 1935 by the United States and most countries in North and South America, adopted an emblem consisting of a red circle encompassing three smaller circles on a white background for identification purposes. See Toman, *supra* note 15, at 18.

Article 16 of the 1954 Hague Convention adopts an emblem that “shall take the form of a shield, pointed below, *per saltire* blue and white (a shield consisting of a royal-blue square, one of the angles of which forms the point of the shield, and of a royal-blue triangle above the square, the space on either side being taken up by a white triangle).”<sup>37</sup> This emblem, which is simpler in appearance than this description might lead one to believe, was chosen after extensive visibility experiments.<sup>38</sup> The implementation of this Article is left to the discretion of competent officials appointed by the Parties to the 1954 Convention.<sup>39</sup> So far, only Germany, Austria, the Netherlands, and Switzerland have provided details on measures taken to implement the emblem.<sup>40</sup> While the efforts of these nations are commendable, these countries are relatively stable and not considered likely future war zones.

In Sarajevo, the use of the special emblem was the Hague Convention provision most visibly enforced. The blue shields designating protected cultural property were provided to Sarajevo cultural organizations by the Museum Documentation Center in Zagreb (Croatia). A 1996 European Community Monitoring Mission note that, “unfortunately, these provided no protection.”<sup>41</sup> During the war, heavy fortifications were often necessary to protect the physical integrity of buildings. This was the case at the National Museum, where a barrier was erected in front of the main entrance on Vojvode Putnika Street (“Sniper’s Alley”). This fortification gave the impression that the building was being used for military purposes. The current Museum Director noted that, “in

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37. 1954 Hague Convention, *supra* note 5, 249 U.N.T.S. at art. 16.1.

38. Toman, *supra* note 24, at 181.

39. Regulations for the Execution of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, 249 U.N.T.S. 240, art. 20 [hereinafter 1954 Hague Convention Regulations].

40. Toman, *supra* note 15, at 187.

41. Lopez Henares, *Ninth Information Report on War Damage to the Cultural Heritage in Croatia and Bosnia-Herzegovina*, EUR. PARL: ASSEMB. Doc. No. 7464, sec. 3 (1996), <http://assembly.coe.int> (last visited Aug. 13, 2003). Council of Europe documents that were accessed from the Internet will refer to section numbers, rather than providing page references, to facilitate future access.

this way, the UNESCO flag [displaying the special emblem] at the Museum entrance [lost] its original meaning” because it could be perceived as a legitimate military target by attacking forces.<sup>42</sup>

### 3. *Special Protection*

Article 9 of the Convention grants immunity to cultural property under special protection unless that property is used for military purposes. If a party violates any of the conditions established for this select status, immunity will be revoked.<sup>43</sup> Special protection, as opposed to the “regular” protection afforded to other cultural objects and sites, is available to property of “very great importance.”<sup>44</sup> Each Party is left to act on its own interpretation of “importance” as the Convention itself does not define this term

Article 12 of the “Regulations for the Execution of the Convention”<sup>45</sup> establishes an international register of cultural property under special protection. The framers of the 1954 Hague Convention hoped that a well-defined procedure for registering property under special protection and disclosing its location would eliminate the potential excuse of ignorance by a hostile party. Only refuges specifically constructed to house movable property, monument centers, and other immovable property can be included on the international register. As a prerequisite for inclusion on the special protection registry, property must be an “adequate

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42. Denana Buturovic, *The National Museum of Bosnia and Herzegovina – Its Emergence and Its Fall in the Overall Destruction of Bosnia and Herzegovina (From April 1992 to the End of 1995)*, in WISSENSCHAFTLICHE MITTEILUNGEN DES BOSNICH-HERZEGOWINISCHEN LANDESMUSEUMS 7, 24 (2000).

43. 1954 Hague Convention, *supra* note 5, 249 U.N.T.S. at art. 11.

44. 1954 Hague Convention, *supra* note 5, 249 U.N.T.S. at art. 8.

45. “The Regulations for the Execution of the Convention for the Protection of Cultural Property in the Event of Armed Conflict” are the sections of the 1954 Hague Convention concerned with the more technical aspects of implementation. Among other subjects, they discuss aspects of organization, special protection registration, transport of cultural property, and the use of the distinctive emblem. See 1954 Hague Convention Regulations *supra* note 39, 249 U.N.T.S. 240.

distance” from industrial or military centers.<sup>46</sup> However, the term “adequate distance” is left undefined, and this omission has caused confusion.

As framed in the 1954 Convention, the concept of “Special Protection” is vexingly vague. It does not necessarily grant a higher level of protection to property on the register. Instead, it merely ensures that registered property is not being used for military gain. The meaning of this distinctive status has been questioned when, without being a safe distance from the action, even the most important museums in the world are excluded from protection.<sup>47</sup>

The international register of property under “Special Protection” as outlined in the 1954 Hague Convention has had very little impact so far.<sup>48</sup> Only Germany, Austria, Cambodia, the Netherlands, and the Holy See have asked for property to be added to the Register.<sup>49</sup> One of the reasons for this may be a shift in priorities to the 1972 World Heritage Convention, which is intended to protect both important cultural and natural heritage.<sup>50</sup>

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46. 1954 Hague Convention, *supra* note 5, 249 U.N.T.S. at art. 8. This article states that special protection is available provided that properties of “very great importance”:

1a) are situated at an adequate distance from any large industrial center or from any important military objective constituting a vulnerable point . . .

1b) are not used for military purposes.

A refuge for movable cultural property may also be placed under special protection, whatever its location, if it is so construed that, in all probability, it will not be damaged by bombs.

3) A center containing monuments shall be deemed to be used for military purposes whenever it is used for the movement of military personnel or material, even in transit. The same shall apply whenever activities directly connected with military operations, the stationing of military personnel, or the production of war material are carried on within the center. *Id.*

47. A shortcoming noted by Patrick Boylan in his 1993 study. See Boylan, *supra* note 17, at 76.

48. Toman, *supra* note 15, at 109.

49. *Id.* at 108.

50. The purpose of this Convention is to preserve the natural and cultural heritage that has universal value to all people. Parties to the 1972 World

Another reason is that providing the location of and access routes to a nation's most valuable treasures during a potential armed conflict is seen as not only dangerous, but foolish as well.<sup>51</sup> Practical experience has done nothing to alleviate these fears. Though never registered for Special Protection under the 1954 Hague Convention, the locations of emergency shelters in Yugoslavia were registered with the National Defense Department. When Vukovar, Croatia fell to Serb forces in November 1991, shelters housing important artifacts were identified from official records by Serb forces. They reportedly captured the objects as prize and removed them to Belgrade.<sup>52</sup>

#### 4. Immunity

Article 14 of the Hague Convention states that protected cultural property is immune from "seizure, placing in prize, or capture."<sup>53</sup> This means that hostile forces cannot legitimately claim property unless it is being used for military purposes. Personnel charged with protecting cultural property are to be "respected" and permitted to continue doing their work.<sup>54</sup>

During the Wars in the former Yugoslavia, allegations were made that Serb forces were in violation of this provision of the Convention as they were not only specifically targeting cultural property for destruction, but also looting important pieces from museums.<sup>55</sup> According to a 1995 report on the implementation of the 1954 Hague Convention, Serb authorities countered that "there was not a single example of targeted and deliberate destruction or damage of a cultural and historical monument similar to the

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Heritage Convention pledge to protect the world heritage sites within their territory by registering their most important sites to the World Heritage List. For more information on the 1972 World Heritage Convention, see <http://whc.unesco.org/nwhc/pages/doc/main.htm> (last visited Feb. 19, 2004).

51. Boylan, *supra* note 17, at 78.

52. *Id.* at 78-79.

53. 1954 Hague Convention, *supra* note 5, 249 U.N.T.S. at art. 14.

54. *Id.* at art. 15.

55. See *infra* Section IV for specific examples of these allegations.

spectacular destroying of the Old Bridge in Mostar by the Croatian forces before the eyes of the entire world.”<sup>56</sup> Accusations of Serbs looting movable property were dismissed as a “dirty form of propaganda.”<sup>57</sup> Instead, they asserted that removal had, in fact, been sanctioned by an expert commission established by the Republic of Serbia which had been given the mandate, as a result of requests from local authorities, to move endangered cultural property to safety (i.e. Serbia).<sup>58</sup> According to this report, the sanctions levied against the Federal Republic of Yugoslavia and its suspension from international organizations, including UNESCO, made it impossible to “give an objective evaluation of the professional approaches and efforts made to mitigate the consequences of the war on cultural heritage.”<sup>59</sup>

### 5. Enforcement

In the 1954 Hague Convention, “Protecting Powers,” who are traditionally called upon to watch over the interests of the parties to a conflict, are to apply the Convention and its regulations in cooperation with the parties.<sup>60</sup> The appointment of Protecting Powers is supposed to be accomplished through channels of complementary international laws, specifically the Vienna Convention on Diplomatic Relations of 18 April 1961 (Article 46) or the 1949 Geneva Conventions and Additional Protocol I.<sup>61</sup> This has rarely happened. To date, “[enforcement of the Convention] is all anticipation, since present policy clearly shows that States have little enthusiasm for the application of a control system [which might affect their sovereignty].”<sup>62</sup> According to Article 2 of the “Regulations for the Execution of the Convention: Organization of Control,” Parties involved in an armed conflict are to “appoint a

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56. 1995 Implementation Reports, *supra* note 27, at 26.

57. *Id.* at 27.

58. *Id.* at 26-27.

59. *Id.* at 27.

60. 1954 Hague Convention, *supra* note 5, 249 U.N.T.S. at art. 21.

61. Toman, *supra* note 15, at 224.

62. *Id.*



representative for cultural property.”<sup>63</sup> In addition, Protecting Powers are to appoint delegates who monitor violations, conduct necessary investigations, and inform the Commissioner-General of any violations.<sup>64</sup> Included in the Commissioner-General’s duties is the commissioning of reports on the Convention and communication with the Parties and their Protecting Powers.<sup>65</sup> In addition, he has the power to order investigations<sup>66</sup> and to act as a Protecting Power, should one not be appointed.<sup>67</sup> In short, he is responsible for ensuring that the process moves along and intervenes if problems arise.

Attempting to explain this enforcement structure can only be easier than actually implementing it because “in practice, it is extremely difficult, if not impossible, to make progress with the formal procedures of the Convention where one or both of the belligerents declines to nominate Protecting Powers.”<sup>68</sup> In only one historical case, the Arab-Israeli conflict of 1967, was a Commissioner-General for cultural property even appointed. Outside parties do not, realistically, have the moral or political authority to impose such a representative.<sup>69</sup> In situations where there are not two well-defined sovereign states involved,<sup>70</sup> Article 23 of the Convention, “Assistance of UNESCO,” has been more effective. This provision allows for the intervention of UNESCO through a Special Representative of the Director-General.<sup>71</sup>

During the course of the war in Bosnia-Herzegovina (1992 – 95), a Protecting Power was not appointed to safeguard the interests of the belligerent states. This may have been the result of

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63. 1954 Hague Convention Regulations, *supra* note 39, 249 U.N.T.S. at art. 2.

64. *Id.* at art. 5. This Commissioner-General is to be appointed by the Director-General of UNESCO.

65. *Id.* at art. 6.5.

66. *Id.* at art. 6.3.

67. *Id.* at art. 6.6.

68. Boylan, *supra* note 17, at 85.

69. *Id.* at 87.

70. One example being the former Yugoslavia where the distinctions changed as the conflict progressed.

71. Boylan, *supra* note 17, at 87-88.

confusion caused by the fact that the conflict began as internal and became international as the States declared independence. However, because the government of the Federal Republic of Yugoslavia (or at this time, the remaining states – Serbia and Montenegro – in the former entity of “Yugoslavia”) did not recognize the independence of Bosnia-Herzegovina or Croatia, the appointment of a Protecting Power “would presumably [have been] a fruitless exercise.”<sup>72</sup>

*B. Criticisms of the 1954 Hague Convention For The Protection of Cultural Property in the Event of Armed Conflict*

The Hague Convention, though it offers a framework for responsible commanders, is of little use in the increasingly common situation where an attacker wishes specifically to destroy the other side’s cultural identity. Nor does it help when, as happened in the Gulf War, the defending commander uses precious monuments as hostages by parking his military installations as close to them as possible.<sup>73</sup>

Non-traditional warfare, in which no standards of acceptable behavior are followed, has become increasingly prevalent since the framing of the 1954 Hague Convention. In conflicts like the one in the former Yugoslavia, destruction of cultural property is a goal – not an unavoidable tragedy. Although it is the most comprehensive agreement to date, the 1954 Hague Convention does not adequately address the purposeful destruction of heritage. In his 1993 review of the Convention, cultural consultant Patrick Boylan points out that “the problem is essentially one of failure in the application of the Convention and Protocol rather than of inherent defects in the international instruments themselves.”<sup>74</sup> To date, the Convention has been invoked in several conflicts,

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72. Boylan, *supra* note 17, at 86. Boylan also notes here that it was “not clear whether either Croatia or Bosnia had attempted to initiate the appointment of Protecting Powers.” *Id.*

73. Amy E. Schwartz, *Is It Wrong to Weep for Buildings?*, WASH. POST, May 10, 1994, at A17.

74. Boylan, *supra* note 17, at 7.

including the conflict in 1969 between Honduras and El Salvador, the conflict in 1971 between India and Pakistan, the conflict in 1974 between Cyprus and Turkey, during the 1970s in Cambodia and Thailand, during the 1980s in the Middle East, the 1991 Persian Gulf War, and the 1991 – 1995 conflicts in the former Yugoslavia.<sup>75</sup> There are some significant problems that continue to plague the Hague Convention's enforcement on a more universal basis.

The major criticism of the Hague Convention is lack of enforcement. Much of the problem is that it leaves State Parties to largely implement its provisions under the "Honor System." In addition, the specified control structure is extremely complicated and too idealistic for the political reality. Most Parties have not made sufficient provisions to prepare in peacetime. While the Second Protocol aims to correct this deficiency, the concept of "military necessity" still only requires that Parties,

make an effort whenever circumstances permit to notify the opposing party within a reasonable time in advance of the decision to withdraw immunity. In short, this clause essentially relieves any State Party of its responsibility to the Convention so long as it determines the 'necessity' to do so.<sup>76</sup>

### *C. The 1999 Second Protocol*

In response to concerns about the effectiveness of the 1954 Hague Convention, a conference was called in 1998 to frame an additional, separately acceded to protocol applicable to both international and non-international conflicts. It is scheduled to enter into force on March 9, 2004.<sup>77</sup> Because the Second Protocol was only written in 1999, it is not directly related to discussions about the conflict in Bosnia. However, its adoption, albeit by

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75. Colwell-Chanthaphonh & Piper, *supra* note 9, at 228.

76. *Id.* at 229-30.

77. See <http://www.unesco.org> for updates.

relatively few parties at the present time, demonstrates how cultural property law protection is evolving to meet present challenges. Five topics were revisited for clarification and strengthening in the 1999 Second Protocol: military exception, protective measures, special protection, individual responsibility, and "institutional aspects."<sup>78</sup> The first four will be discussed here.

### *1. Military Exception*

One of the main weaknesses of the 1954 Hague Convention is the vagueness of the term "military necessity." To clarify what "military necessity" entails, a definition of the term was prepared by the Secretariat of UNESCO in 1998.<sup>79</sup> Military necessity is

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78. Jean-Marie Henckaerts, *New Rules for the Protection of Cultural Property in Armed Conflict*, 1999 INTERNATIONAL REVIEW OF THE RED CROSS No. 835, 593, available at <http://www.icrc.org/web/eng/siteeng0.nsf/iwpList174/DFE2EF4C9B065770C1256B66005D898C>.

79. Jan Hladik, *The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and the Notion of Military Necessity: The Review of the 1954 Convention and the Adoption of the Second Protocol Thereto* (26 March 1999), 1999 INTERNATIONAL REVIEW OF THE RED CROSS No. 835, 621, available at <http://www.icrc.org/web/eng/siteeng0.nsf/iwpList174/FF7F81319B1F96DAC1256B66005D8A96>. The definition of "military necessity" in respect to cultural property under *general protection* is:

- 1) Measures undertaken by a military commander to obtain, as quickly as possible, the complete surrender of the enemy must be lawful and in conformity with the generally recognized principles of international humanitarian law, both of treaty and customary nature, such as the distinction between combatants and non-combatants, proportionality and the prohibition of reprisals against protected categories of persons and objects.
- 2) Those actions must be limited as to the time, purpose, and object of military operations.
- 3) No other feasible alternative was available at the moment of the operation.
- 4) The assessment of the situation by a commander was made from all sources reasonably available to him/ her at the moment of the operation.
- 5) Imperative military necessity may be established only by the officer

clarified in the Second Protocol by stating that “imperative” means that there are no other options available to achieve a particular military objective.<sup>80</sup> Article 4 of the Second Protocol states that cultural properties will be subject to targeted attack only when “by their function, [they] have been made into military objects” or there is “no feasible alternative available to obtain a similar military advantage.”<sup>81</sup> The decision to target cultural heritage can only be made by a commanding officer in charge of a battalion (or its equivalent).<sup>82</sup>

## 2. Peacetime Preparation

The Second Protocol calls for the establishment of an inter-governmental committee that will oversee implementation of the Convention and its protocols.<sup>83</sup> While the original 1954 Convention did not define peacetime measures, the Second Protocol gives specific examples in Article 5. These include the preparation of inventories, the establishment of emergency procedures, and the designation of “competent” authorities. To address the issue of financing this preparation, Article 29 of the

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commanding a force the equivalent to a battalion unless the circumstances of the military engagement do not allow this.

6) If possible, a warning shall be communicated to the opposing party a reasonable time in advance.

Military necessity in respect of cultural property under *special protection*:

In addition to the six conditions listed under a), the following two conditions must also be respected.

1) Unavoidable military necessity may be established only by the officer commanding a force equivalent to a division.

2) A warning shall be communicated to the opposing party in a reasonable time in advance. *Id.*

80. Henckaerts, *supra* note 78.

81. Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, March 26, 1999, art. 6, at [http://portal.unesco.org/en/ev.php@URL\\_ID=15207&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php@URL_ID=15207&URL_DO=DO_TOPIC&URL_SECTION=201.html) (last visited Feb. 19, 2004) [hereinafter Second Protocol to the 1954 Hague Convention].

82. *Id.*

83. *Id.* at art. 24.

Second Protocol provides for the establishment of a fund specifically for this purpose (much like the one for the implementation of the World Heritage Convention).<sup>84</sup> In addition, the Second Protocol attempts to codify education on the Convention by specifying the need to incorporate cultural property concerns into military training.<sup>85</sup>

### 3. *Enhanced Protection*

In an attempt to overhaul the concept of “Special Protection,” the 1999 Second Protocol basically redefines it under a new name. It is now known as “Enhanced Protection.” Enhanced Protection still requires that cultural property is not used for military purposes, but only excludes inclusion on the international register on the basis of how it is being used. The troublesome “adequate distance” requirement was thrown out. Eligibility for this designation requires that a site “be protected by adequate domestic legal and administrative measures recognizing its exceptional cultural and historic value and ensuring the highest level of protection.” In addition, the State Parties must declare that the cultural property in question will not be used for military purposes.<sup>86</sup> The term “Enhanced Protection” is misleading because the difference between regular and enhanced protection is not in the degree of care that must be afforded by the enemy, but in the commitment of the property holder to never use the most important heritage within its borders for military advantage. A more appropriate designation would be “Certified Protection.”<sup>87</sup> If a party decides to use a site on the Enhanced Protection list for military purposes, that party may face criminal indictment for war crimes.<sup>88</sup>

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84. *Id.* at art. 29.

85. *Id.* at art. 30.

86. *Id.* at art. 10.

87. Henckaerts, *supra* note 78.

88. *Id.*

#### 4. Criminal Prosecution and Individual Responsibility

The Second Protocol also goes further than the original Convention in establishing a system for the prosecution of crimes against culture, which only required that Parties undertake criminal prosecution “within the framework of their ordinary criminal jurisdiction.”<sup>89</sup> This provision was not very useful for prosecution or deterrence because it did not specify the violations that would carry a criminal sanction.<sup>90</sup> Article 15 of the Second Protocol establishes that if cultural property protected under the Convention is the object of attack, used in support of military action, or subjected to theft, pillaging, or vandalism,<sup>91</sup> such an action would constitute a grave breach of international law and subject a violator to criminal proceedings. Under the Second Protocol, Parties have a duty to ensure that there is legislation in place that would make the offenses listed in the Protocol punishable under domestic law.<sup>92</sup>

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89. “The High Contracting Parties undertake to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the present Convention.” 1954 Hague Convention, *supra* note 5, 249 U.N.T.S. at art. 28.

90. Henckaerts, *supra* note 78.

91. *Id.* Article 15 of the Second Protocol to the 1954 Hague Convention specifically prohibits:

a) Making cultural property under enhanced protection the object of attack.

Using cultural property under enhanced protection or its immediate surroundings in support of military action.

Extensive destruction or appropriation of cultural property under the Convention and (the Second) Protocol.

Making cultural property protected under the Convention and (the Second) Protocol the object of attack.

Theft, pillage or misappropriation of, or acts of vandalism directed against, cultural property protected under the Convention. Second Protocol to the 1954 Hague Convention, *supra* note 81, art. 15.

92. Henckaerts, *supra* note 78.

#### IV. SARAJEVO DURING THE WAR

##### *A. Background to the Cultural Destruction in Sarajevo*

For many people, the War in the former Yugoslavia was extremely complicated and difficult to grasp. This is because:

at various times, (a) the Socialist Federal Republic of Yugoslavia (SFRY), which was succeeded on 29 April 1992 by the Federal Republic of Yugoslavia (FRY), was engaged in armed conflict against one or more of its neighbors: Slovenia, Croatia, Bosnia, and Herzegovina; (b) Croatia was engaged in armed conflict against the SFRY, the "Republic of Serbian Krajina," the FRY, and Bosnia-Herzegovina; (c) the latter was engaged in armed conflict against the SFRY, the FRY, the Republika Srpska (Serbian Republic), Croatia, the HVO (the Bosnian Croat entity), and the Bosnian Muslim faction controlled by Fikret Abdic; and (d) Slovenia was engaged in armed conflict with the SFRY.<sup>93</sup>

In certain ways, the situation's complexity is a consequence of the region's position at the intersection of Christian Europe and the Muslim East. When the Yugoslav State was created after World War I, the country's three largest nationalities – Serbs, Croats, and Slovenes – had distinctly different histories, religions, cultural traditions, and social structures.<sup>94</sup> There was considerable influence in Bosnia from the other republics,<sup>95</sup> particularly

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93. William J. Fenrick, *The Application of the Geneva Conventions by the International Criminal Tribunal for the Former Yugoslavia*, 1999 INTERNATIONAL REVIEW OF THE RED CROSS No. 835, 317, available at <http://www.icrc.org/web/eng/siteeng0.nsf/iwpList173/6666B5AE1CDD5696C1256B66005D0E5B> (last visited July 11, 2003).

94. Ivo J. Lederer, *Nationalism and the Yugoslavs*, in NATIONALISM EASTERN EUROPE 396, 397 (Ivo J. Lederer & Peter F. Sugar, eds., University of Washington Press 2d ed. 1994) (1969).

95. Bosnia-Herzegovina, Croatia, Macedonia, Montenegro, Serbia, and



Catholic Croatia and Orthodox Serbia. For its part, Bosnia-Herzegovina became part of the expanding Ottoman Empire in the mid-fifteenth century when the Ottoman armies brought to the region the Islamic religion and cultural influences of the Empire.<sup>96</sup> This history is reflected in the strong presence of bazaars, mosques, mahalla districts, and other hallmarks of Ottoman architecture in the region.<sup>97</sup> In 1878, Bosnia was absorbed into the Austro-Hungarian Empire. In the years before the First World War, civic buildings were erected according to the prevailing Viennese tastes.<sup>98</sup> Powerful regional identities were deemphasized when the republics joined together to form the Yugoslav State in 1918, particularly under the leadership of Josip Broz Tito (end of World War II until his death in 1980).<sup>99</sup> However, the inherently unstable union would not survive the sweeping changes that came through the region with the end of communism. In the absence of strong federal leadership, nationalist and regional tensions were allowed to flair.

The Yugoslav Federation began to splinter apart when Slovenia and, then, Croatia declared independence in 1991. The conflict in Bosnia-Herzegovina began on April 5, 1992, after it declared independence from Yugoslavia. Before the start of the war, Bosnia was forty-three percent Muslim, thirty-five percent Orthodox Serb, and eighteen percent Roman Catholic Croat.<sup>100</sup> Sarajevo was a modern city whose cultural landscape reflected a rich tradition of tolerance and diversity. As Riedlmayer points out:

Buildings are intentional structures. They do not appear at random. When you have a city that does not have separate religious quarters, as neither Sarajevo nor Mostar did, and when you have houses of worship located next to each other,

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Slovenia made up "Yugoslavia."

96. Riedlmayer, *supra* note 4.

97. EUR. PARL. ASSEMB. Doc. No. 6756, *supra* note 7, at 12.

98. Riedlmayer, *supra* note 4.

99. Lederer, *supra* note 94, at 397.

100. See Samantha Power, "A PROBLEM FROM HELL:" AMERICA AND THE AGE OF GENOCIDE 247 (2002).

it is an indication that people are willing to live with each other. So their structures, being next to each other, are not acts of challenge, but rather statements of coexistence. If they couldn't stand the sight of each other, they would have built out of sight of each other.<sup>101</sup>

The commingling of architectural heritage made it more difficult for belligerent troops to specifically target certain sites. Thus, when damage reports produced during and after the war note that there was much more destruction to the Islamic cultural heritage, it is clear that it was not accidental. According to a September 20, 1993 report commissioned by the Parliamentary Assembly of the Council of Europe, nine hundred mosques were destroyed and five hundred and fifty seriously damaged in Bosnia-Herzegovina in the first year of fighting. Included in these numbers are twenty mosques dating from the sixteenth century.<sup>102</sup>

There were two main types of destruction during the war: 1) damage from military operations. 2) the purposeful removal of cultural property (looting) for useable materials or, more sinisterly, so as to discourage the populace from returning to their homes.<sup>103</sup> Mortar, rocket launchers, and heavy artillery caused most of the damage done in Sarajevo during the war.<sup>104</sup> Outside of Sarajevo, Dubrovnik, Mostar, and Vukovar, there were more frequent occurrences of dynamiting and burning ("the simpler means of ethnic and cultural cleansing.")<sup>105</sup>

The resources available to cultural organizations during the conflict were greatly affected by the political upheaval caused by

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101. Riedlmayer, *supra* note 4.

102. Colin Kaiser, *Third Information Report on War Damage to the Cultural Heritage in Croatia and Bosnia-Herzegovina*, EUR. PARL. ASSEMB. Doc. No. 6904 (1993), at 6.

103. EUR. PARL. ASSEMB., Doc. No. 6756, *supra* note 7, at 14.

104. *Id.*

105. Colin Kaiser, *Sixth Information Report on War Damage to the Cultural Heritage in Croatia and Bosnia-Herzegovina*, EUR. PARL. ASSEMB. Doc. No. 7133, Sec. F (1994), at

<http://assembly.coe.int/Main.asp?link=http%3A%2F%2Fdocuments%2Fworkin gDocs%2Fdoc94%2FEDOC7133.htm>.

the quick transition from a communist system that held very distinct groups in a federation to nationalistic states aiming for homogeneity.<sup>106</sup> In theory, the protection of cultural property in Bosnia-Herzegovina was to be overseen by a central, national body in the capital city of Sarajevo, with support provided by regional and local offices. This was the case in Croatia, where a well-organized cultural infrastructure was in place.<sup>107</sup> However, there is little evidence that a similar infrastructure was an actuality in Bosnia-Herzegovina.<sup>108</sup> A museum could be under the authority of several different governmental bodies (republic, district, or city) depending on its location and purpose. Confusion as to which authority cultural organizations were accountable to during the transitional period was evident.<sup>109</sup> Moreover, the government organizations that existed for the protection of culture had the same difficulties operating under wartime conditions as the organizations they were supposed to be helping. For example, Farhad Mulabegovic, Deputy-Director of the Federal Institute for the Protection of the Cultural and Natural Heritage of Bosnia-Herzegovina, reported that his organization had no funding for publications, supplies or equipment. Their library was inaccessible to them because it was located in Serb-controlled territory. They, too, were desperate for contact with foreign colleagues.<sup>110</sup>

Given the desperate humanitarian situation during the conflict, the national and local government bodies were not able to allocate resources to “soft” concerns like art and culture.<sup>111</sup> The 1954

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106. Often in discussions about the disintegration of Yugoslavia, ethnic tensions are cited as a reason for the violence. Strictly speaking, this is not true. Genetically, there is no difference between a Serb, Croat, and Bosniak. The basis for differentiation is religious and cultural.

107. EUR. PARL. ASSEMB., Doc. No. 6756, *supra* note 7, at 13. With the exception of a few well-publicized examples like Dubrovnik, Croatia had a more successful experience protecting cultural property.

108. *Id.*

109. EUR. PARL. ASSEMB. Doc. No. 7464, *supra* note 41, at Sec. 2.

110. EUR. PARL. ASSEMB. Doc. No. 7133, *supra* note 105, at Sec. C.

111. EUR. PARL. ASSEMB. Doc. No. 7464, *supra* note 41, at Sec. 2. Kaiser notes in this report that the UN Office of the Special Coordinator’s Plan for

Hague Convention envisioned that protection would be a joint effort between international bodies, national governments, and cultural professionals. In this case, the national government was not capable of protecting the heritage. UNESCO, charged with overseeing the implementation of the Hague Convention, was noticeably absent. This left cultural administrators and a few international organizations with the daunting responsibility for protection and little political backing.

During the hostilities, the European Community Monitoring Mission (ECMM) found security in museums to be poor. Part of the reason for this was that alarm systems could not function without electricity and broken windows were covered only in plastic, if at all.<sup>112</sup> According to expert reports, most, if not all, of the museums in Sarajevo were poorly equipped in modern museum practices before the war.<sup>113</sup> Computerized systems for record keeping were not in place.<sup>114</sup> Despite the long-term heavy bombardment of the city, it is remarkable that only two museums were completely destroyed – the Museum of the XIV Olympic Winter Games and the Museum of the Sarajevo Assassination (of Archduke Franz Ferdinand).<sup>115</sup> Most others received serious damage that compromised or destroyed parts of their collections. Seven years after the Dayton Peace Accord was signed, the destruction caused during the “siege” continues to influence working conditions. For example, climate control continues to be inadequate and some of the galleries still need to be repaired before works can be moved out of storage.

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“Restoring Life to Sarajevo” did not include significant planning for cultural heritage. Eur. Parl. Assemb., Doc. No. 7133, *supra* note 105, at Sec. C.

112. EUR. PARL. ASSEMB., Doc. No. 7464, *supra* note 41, at Sec. 2.

113. *Id.* at Sec. 4.2.

114. *Id.* at Sec. 2.

115. *Id.* at Sec. 4.2.

### *B. The Experience of Cultural Organizations in Sarajevo*<sup>116</sup>

The observations and efforts of museum employees are often excluded from discussions of cultural property protection. However, their experience shows the shortcomings of the current protection model and the real challenges faced in the war zone. For this reason, the work of cultural organizations will be discussed in some detail here.

#### *1. Umjetnicka Galerija BiH – National Gallery of Bosnia and Herzegovina*

Founded in 1946, the National Gallery's collection contains approximately 4,500 objects, mostly by Bosno-Herzegovinian and Yugoslav artists. When the war broke out on April 6, 1992, several museum staff members and neighbors, who had become refugees, moved into the galleries and acted as a security force. Gallery Director, Meliha Husedzinovic, believes that this move prevented widespread looting. Throughout the Siege, volunteers

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116. Interviews with directors of cultural organizations were conducted in Sarajevo, Republic of Bosnia and Herzegovina on January 20<sup>th</sup> and 21<sup>st</sup> 2003. The subjects of these semi-structured interviews were Meliha Husedzinovic, Director of the National Gallery of Bosnia and Herzegovina, Muhiba Kaljanac, Director of the Historical Museum of Bosnia and Herzegovina, and Jakob Finci, Head of the Jewish community of Sarajevo and President of La Benevolencija. Subjects were chosen for their experience, their willingness to be interviewed on this topic, and their availability during the short interview period. Interpretation was provided by Asja Mandic, a curator at ARS AEVI (The Contemporary Art Center of Sarajevo). Because English was not the first language of interview subjects, special care was taken to clarify responses in order to ensure that answers and wording were not influenced by bias. Interview answers were hand recorded. In addition to in-person meetings, an interview with Colin Kaiser, the current UNESCO representative in Sarajevo who served as a cultural consultant to the Council of Europe during the war, was conducted via electronic mail. Because he did not join the UNESCO office in Sarajevo until 1996, his comments were primarily based on his personal views and experience conducting fact-finding missions during the War. An e-mail discussion also took place with Nermina Zildzo, an artist who volunteered with the Commission for the Protection of Cultural Heritage.

ran the institution because the Gallery's curatorial staff atrophied from nine to three. Before the war began, several Serb gallery guards organized a burglary of icons and other valuable works from the collection before abandoning their posts. The Parliamentary Assembly of the Council of Europe fact-finding mission put this theft at forty icons, two Hodler paintings, and an unknown quantity of Islamic manuscripts.<sup>117</sup> When fighting broke out, the collection was immediately moved into a basement storage space. From 1993 through the end of the War, the Gallery functioned and produced exhibitions like the renowned, "Witnesses of Existence," which showed works by Bosnian artists.

Husedzinovic's major concern during the War was for the building. The rain gutters were destroyed by bullets, which allowed water to stream down the walls, making the galleries very wet and humid.<sup>118</sup> The building's humidity control was dependent on electricity, which was not on during most of the war. This damage could not be repaired because of a lack of supplies and the obvious danger involved.

In Husedzinovic's opinion, the enforcement of the 1954 Hague Convention would not have "done much good" in this case. In 1993, window coverings were provided to the gallery by UNPROFOR, but this was the only outside assistance that the Gallery received during the course of the war. She believes that outside aid would have been helpful, particularly in providing better conditions in the basement storage area.

## *2. Historijski Muzej Bilt - The Historical Museum of Bosnia and Herzegovina*

Founded in 1945 as the "Museum of the People's Liberation of Bosnia and Herzegovina," the Historical Museum assumed its current name in 1993. The collection, which was in good condition before the war, currently contains over 300,000 objects

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117. EUR. PARL. ASSEMB. Doc. No. 7464, *supra* note 41, at Sec. 4.1.

118. Husedzinovic notes that it took a year for the walls to dry out after the War.

from the time of the Slovenes' arrival in the seventh century to the present time. Before the War, the Museum's staff numbered forty, nine of whom were curators. This number was reduced to two curators and eight total employees during the conflict. When the War broke out, no official plan for preserving the collection was in place. Staff members immediately started moving it into the basement, which is also where they did their work. The Director, Muhiba Kaljanac, says that they did what they could, and that even if there had been a plan in place, the conditions probably would not have allowed them to properly carry it out. Soldiers were sent to provide security for the collection.<sup>119</sup>

There were also psychological barriers to accepting the reality of war. Kaljanac notes that nobody believed that the war was happening or that it would go on for so long. The museum building is located on Vojvode Putnika Street (now "Zmaja od Bosna"), which was the front line of the conflict. This road was known to the world as "Sniper's Alley" during the war. Undoubtedly, this was one of the most dangerous spots in Sarajevo. To get to the Museum, the staff had to take side streets. To avoid sniper fire, they would have to run across Sniper's Alley, hide behind a nearby school, and run one-by-one across another street. Their care paid off – nobody was shot during the duration of the war. The staff's daily activities mostly consisted of moving the contents of the library that were directly exposed to the front line. Because of the constant threat of sniper fire, this was extremely dangerous. Exhibitions were moved to safer places, further removed from the front lines.

Kaljanac says that shrapnel damaged approximately eighty paintings during the conflict. A 1996 Parliamentary Assembly report puts this number higher. According to this report, 97 paintings and 142 archival works were damaged by shrapnel, 215 three-dimensional objects were damaged in a break-in attempt and 97 by war action, 200 library items, and 130 documentation center

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119. At the time of this interview, I did not clarify the affiliation of these "soldiers." Most likely, these were security forces provided by the Commission for the Protection of the Cultural Heritage.

items were damaged (cause unspecified).<sup>120</sup> Shells pierced about thirty holes in the roof of the Museum, which was not adequately covered until 1997. Some galleries are now in very bad condition because of water damage. In fact, the whole building is now in rather poor physical shape. Even at the present time there is no climate control in the building. Much of the collection remains in storage because the conditions do not exist to properly display it.

As far as outside help, Kaljanac felt that she and the staff were “all alone.” They received no aid from UNESCO or any other international organizations. At the time, she felt that it would have been impossible for them to come. Her perception was that the international community did not have much interest in the problems of cultural institutions. Now, she thinks that more could have been done, particularly in supplying packing and other materials. Kaljanac points out the one exception in outside aid: Marian Wenzel. Wenzel was a scholar of Bosnian history<sup>121</sup> who was considered a great friend of Sarajevo cultural organizations. During the conflict (as noted in the Council of Europe reports by Colin Kaiser), she traveled to Sarajevo to speak with cultural workers. Kaljanac remembers one show of solidarity in particular that made a great impression on the staff: Wenzel came to the museum wearing a bulletproof vest. When she saw that the museum staff did not have such protection, she took hers off.

### 3. *Zemaljski Museum – National Museum*

On February 1, 1888, the National Museum of Bosnia and Herzegovina was established.<sup>122</sup> Its collection focuses on archaeology (150,000 objects), the natural sciences (over 1,000,000 objects), ethnology (material culture – 15,000 objects,

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120. EUR. PARL. ASSEMB. Doc. No. 7464, *supra* note 41, at Sec. 6.

121. Wenzel was also the head of the Bosnia-Herzegovina Heritage Rescue Committee, an organization that provided technical support and undertook fundraising during the war. Colin Kaiser, Second Information Report War Damage to the Cultural Heritage in Croatia and Bosnia-Herzegovina, EUR. PARL. ASSEMB. Doc. No. 6869 (1993), 26.

122. Buturovic, *supra* note 42, at 8.



oral folklore – 14,000 objects), and cultural anthropology (size of collection unknown).<sup>123</sup> The Museum, besides organizing exhibitions and publishing catalogues, is also a leader in research and scholarship.

Denana Buturovic, the current Director, began a report on the National Museum's wartime activities by recounting a recurrent question of those working there at the time:

is what is happening to us a reality, do the twenty of us, or the average of fifteen that came to the Museum every day, to this temple of millennia old civilization and cultures, whose existence has been verified and affirmed here for more than a century; do we really share the destiny of the bygone civilizations, whose remnants we are merely keeping in the Museum?<sup>124</sup>

For Buturovic, the actions of the staff of the National Museum were integrally tied to this psychological shift from feeling one is a member of a living culture to expecting that one may be on the verge of extinction.

The National Museum was ill prepared to confront this shift. Throughout 1991, the Museum was in poor financial shape.<sup>125</sup> The staff had atrophied due to retirement, death, and the pursuit of other opportunities. Around this time, the Public Fund for the Culture of Bosnia and Herzegovina paid for a new alarm system meant to dramatically improve the security of the collection.<sup>126</sup> The staff of the Museum had instead advocated for the purchase of protective storage. Buturovic notes that the staff was correct in lobbying for special cases because the alarm devices could not be used during the war because there was no electricity.<sup>127</sup>

The Museum staff was not prepared to work in a wartime situation. In an October 21, 1991 letter sent to the Ministry of

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123. EUR. PARL. ASSEMB. Doc. No. 7464, *supra* note 41, at Sec. 6.

124. Buturovic, *supra* note 42, at 5.

125. *Id.* at 15.

126. *Id.*

127. *Id.*

Education, Science, Culture, and Sports, the Museum states that it had spent “about ten days for its preparations to work under the eventual war conditions.”<sup>128</sup> During this time, reports show that discussions were held:

on the need to take the museum material outside the Museum, on selecting the important documents and exhibits, on preparing the material for packing, and the choice of special aluminum-made cases – containers for storing the selected material (moisture resistant, dust resistant, etc.). The appropriate storage rooms in the basements were chosen, cleaned, and painted. The experts were authorized to select and put the most important museum material into these rooms.<sup>129</sup>

A major issue facing cultural organizations even before the conflict started was the lack of available funds for war preparations. Buturovic writes that,

none of the institutions had received the funds for such purposes, the further development of events proved that those who could have secured the funds, were not ready to do so, and that those who could have taken care [of] how to use such funds if they received any of them, did not know how to use them, with possible minor exceptions.<sup>130</sup>

While Museum departments had requested money to microfilm inventories, such additional funds needed to be requested in 1990 (presumably because of the budget cycle) – before the outbreak of war in the region.<sup>131</sup> At the beginning of the conflict, the City of Sarajevo Institute for the Protection of Cultural, Historical, and Natural Heritage warned of potential dangers and worked to create an information system and a system for identifying cultural

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128. Buturovic, *supra* note 42, at 15-16.

129. *Id.* at 16.

130. *Id.*

131. *Id.*

property. Buturovic points out that there was “no necessary coordination between the Republic and City Institutes charged with protecting culture.”<sup>132</sup> Following a Decree by the President of Bosnia and Herzegovina entitled “The Proclamation of War in the Republic (June 20, 1992),” it was decided to establish a Crisis Headquarters of the National Museum of Bosnia and Herzegovina.<sup>133</sup> The duties of this group were to organize the work in the institution under wartime conditions, to supervise the removal of the most valuable exhibits, publications, documents, and records to a safer location, and to make important decisions on behalf of the Museum during the war.<sup>134</sup>

More than twenty-five percent of Museum employees left their posts (for various reasons) from the beginning of April to the beginning of May 1992.<sup>135</sup> The remaining Museum employees were charged with classifying and moving archives and documents to the designated storage space. Dr. Enver Imamovic moved the famous Sarajevo Haggadah from the Museum to a vault in the National Bank on Sunday, June 6, 1992. In a *New York Times* article by Roger Cohen, this act was described as “a Muslim saving a Jewish manuscript stored in an old Viennese safe in the basement of a museum built by the Austro-Hungarian Empire and under attack from Serbian nationalists bent on destroying the mingling of cultures and religions that is the hallmark of Sarajevo.”<sup>136</sup>

For the removal of the *Haggadah*, the responsible parties in the city hall’s department of culture were consulted. Assistance was asked for and given by the Center for Security Services Sarajevo (CSB).<sup>137</sup> In a report, Prof. Dr. Imamovic wrote:

In view (of) the fact that the National Museum entered into

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132. *Id.* at 17 n.8.

133. *Id.* at 25.

134. *Id.* at 27-28.

135. *Id.* at 19.

136. Roger Cohen, *Where Hope Has Withered*, N.Y. TIMES, June 28, 1995, at A1.

137. Buturovic, *supra* note 42, at 20.

the war without proper preparations, and that even the most basic measures for the protection of treasure it had held in its depots were not undertaken, the situation occurred that the same treasure was absolutely not protected either from bombing, fire or destruction, or from the theft and devastation by the individuals and groups that went into the Museum without control, and took over the Museum buildings.<sup>138</sup>

Buturovic also claims that senior museum leadership was unwilling to act decisively to protect the collection.<sup>139</sup>

When the war in Bosnia broke out in April 1992, internationally approved signage (the emblem specified in the 1954 Hague Convention) was placed on the National Museum building. A compulsory work order was put into place on April 9, 1992.<sup>140</sup> According to Buturovic, the Museum security services were not reorganized to confront the threat of an increasingly hostile environment.<sup>141</sup> From April 9<sup>th</sup> to May 2<sup>nd</sup> 1992, “mass duty service” was established in the security services department. This service required that almost all employees of the Museum be involved with security watches according to a prearranged schedule. At the end of April 1992, a number of employees involved with these watches left Sarajevo suddenly. Most of those who left were men.<sup>142</sup> From May 2, 1992 (the beginning of the fiercest fighting in the city) an ad hoc security service was put in place. From April 1993 until the end of the conflict, the Commission for the Protections of the Cultural Heritage carried out security duties.<sup>143</sup> Members of the Croatian Defense Council (CDC) were also stationed in the Natural Sciences Department

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138. *Id.* at 21. Buturovic notes that the quoted report does not have a proper protocol number in the Museum records.

139. *Id.* at 20.

140. *Id.*

141. *Id.* at 21.

142. *Id.* at 22.

143. *Id.* at 22-23. This was the volunteer corps of artists under the leadership of the actor, Josip Pejakovic.

from March 1993. Nonetheless, there was some theft of technical equipment during this time.

The staff improvised the protection of the exhibits and the building.<sup>144</sup> They attempted to seal broken exhibit cases with available plastic and tape<sup>145</sup> and continued to remove the exhibits into safe storage.<sup>146</sup> The Acting Director of the Museum, Dr. Rizo Sijaric was shot and killed by sniper fire from the direction of the Serbian position on December 6, 1993 as he attempted to secure plastic sheeting on the damaged roof.<sup>147</sup> The activities of the staff were limited by the size and weight of certain objects. For example, the *Donja Dolina* boats, the centerpieces of the pre-history collection, remained in place throughout the war. They were protected with boards and plastic only. Thankfully, they did not receive a direct hit.<sup>148</sup> Most of the collections were moved into underground depots. While this ensured that objects were physically safer, climate control remained a serious issue.<sup>149</sup>

Direct attacks on the Museum building began on May 1, 1992.<sup>150</sup> According to diaries kept by on-duty staff, shrapnel broke all the windows, exhibits and cases were damaged, and the roof sustained direct hits and leaked.<sup>151</sup> Along with the sustained level of attack, inclement weather contributed to the damage. Buturovic writes, “for a considerable period of time one could not speak about the influx of moisture into the building, but rather, about the uninhibited flow of water into the building.”<sup>152</sup> This caused the building and its contents to deteriorate rapidly. To worsen the desperate state of the institution, “the entire infrastructure in the building[s] [water supply, electrical installations, telephone lines

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144. *Id.* at 44.

145. *Id.* at 33.

146. *Id.* at 34.

147. *Id.* at 25.

148. *Id.* at 44-45.

149. *Id.* at 46.

150. *Id.* at 29.

151. *Id.* at 29-33. Buturovic details the damages sustained in the early part of the War in the chapter titled, “With Weapons Against the Museum.”

152. *Id.* at 39.

and central heating] was out of order throughout the war.”<sup>153</sup> The roof of the Natural Sciences and Archaeology pavilions were destroyed and were not repaired for over two years because of the dangers to workers from snipers,<sup>154</sup> problems with contractors, and lack of funds.

The greatest outside assistance to the Museum was provided by the city of Sarajevo. They furnished plastic sheeting, boards, nails, and other basic supplies.<sup>155</sup> The Commission for the Protection of the Cultural Heritage provided similar assistance.<sup>156</sup> The Patriotic League of Bosnia and Herzegovina and the Civilian Protection of Marindvor Township assisted the Museum in 1994 and 1995 in the evacuation of the collection to a safer location.<sup>157</sup> The Bosnia and Herzegovina Heritage Rescue (BHHR) provided technical assistance beginning in 1994. Wenzel was also one of the first outside experts to visit Sarajevo institutions in May 1993. She was able to instruct the staff on the protection of *stec'ak* (medieval monuments) which were in the Museum's botanical garden.<sup>158</sup>

#### 4. *The Jewish Community of Sarajevo*

Jakob Finci is the President of the Jewish organization “La Benevolencija.” During the War, this organization was both a cultural and humanitarian organization. Its work was extremely successful, in large part because the three largest religious groups saw it as neutral. During the war, the community<sup>159</sup> undertook humanitarian work. When it became clear that these activities were not enough to address the emotional and psychological needs of Sarajevans, they began to organize cultural activities, which

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153. *Id.* at 41.

154. UNPROFOR attempted, unsuccessfully, to arrange a temporary cease-fire. EUR. PARL. ASSEMB. Doc. 7464, *supra* note 41, at Sec. 3.

155. Buturovic, *supra* note 42, at 57.

156. *Id.*

157. *Id.* at 56-57.

158. *Id.* at 48.

159. The community now numbers approximately seven hundred. *See* Finci, *supra* note 13.

were very well attended. In September 1992, La Benevolencija organized “Sepharad 92,” an event at the Sarajevo Holiday Inn composed of two exhibitions, two roundtable discussions, and a concert to commemorate the 500<sup>th</sup> anniversary of the expulsion of the Jews from Spain. When supplies were available, they wrote and published a cultural bulletin in English and Bosnian and produced a radio program. According to Finci, one of the main problems in discussing the events of 1992 – 95 is that nobody can figure out what to call it. Some call it the “Aggression.” Others – the “Siege.” Still others, a “Civil War.” However it is described, Finci believes that cultural objects were deliberately targeted. This was not the case during World War II. During that conflict, mosques were only damaged collaterally. According to Finci, nothing was safe in Sarajevo. Cultural objects were destroyed because they were symbols. The Jewish Cemetery, strategically located in the military sense, served as a nest for snipers. It was heavily mined and damaged because it was located on the front line. In 1994 and 1995, Finci describes the situation in Sarajevo as “an imitation of life.” People spent the morning in cultural activities (plays, exhibitions, concerts) before they went to get their humanitarian supplies. In his opinion, “cultural activities were a way of preserving their lifestyles.” According to Finci, UNESCO wanted cultural institutions to put up flags (the blue shield denoting protected cultural property). “It was hard to believe that these rules would or could be followed.”

### *5. The Commission for the Protection of Cultural Heritage*

At the beginning of the war, a volunteer force called the Commission for the Protection of the Cultural Heritage was formed under the initiative of actor Josip Pejakovic. Assigned to this unit were painters, artists, and architects who joined in order not to be drafted to the front lines. They protected storage and provided security for cultural organizations in Sarajevo. One of their most important tasks was to move objects to safe locations, usually basement storage areas. This was critical not only because the objects were further from the harm of bullets and mortar, but

also because Sarajevo was completely looted early on of everything of value except for books. During the first winter of the siege, books were also taken for heat.<sup>160</sup> Nermina Zildzo, an artist who joined the brigade during the War, explains her decision to do so:

After a couple of months I left “higher” activities (so-called ‘cultural resistance to war’) as a nonsense that just didn’t fit war conditions and joined basic ‘combat’ which still seems to me as the only reasonable thing to do. Instead of neglecting security questions while producing new art to look like ‘civilized’ victims, we chose saving what we already had plus protecting intellectuals in various ways.<sup>161</sup>

The innovative action of Pejakovic and others provided the most effective security for cultural organizations during the war. In addition, it potentially saved the lives of hundreds of men who would have otherwise been drafted into combat. The effectiveness of this organization can perhaps be credited to the fact that artists were protecting art works. The resources of the government, given the humanitarian crisis, needed to go to saving lives. Instead of having an uncommitted force put in place, they allowed this special brigade to form so that those most committed to the arts were in charge of protecting it.

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160. *Id.*

161. E-mail from Nermina Zildzo, to Megan Kossiakoff, author (Aug. 7, 2003, 14:59:57 EDT) (on file with author)



## V. THE ACTIONS AND EFFORTS OF UNESCO DURING THE WAR IN THE FORMER YUGOSLAVIA<sup>162</sup>

UNESCO is responsible for overseeing the 1954 Hague Convention and the 1972 World Heritage Convention. During an armed conflict, the organization can be helpful in three ways: it can establish control procedures for implementation of the Convention, the Director-General can offer services to a State Party, and a State Party can request technical cooperation from the organization. The work of UNESCO in the Balkans was aided by the United Nations Protection Forces (UNPROFOR), the United Nations Children's Fund (UNICEF), the World Health Organization (WHO), the United Nations Center for Human Rights, the Department of Humanitarian Affairs, the European Community Monitoring Mission (ECMM), the Council of Europe,

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162. Created in 1946, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) is mandated in its constitution to protect cultural heritage. Its stated mission is:

To contribute to peace and security by promoting collaboration among nations through education, science, and culture in order to further universal respect for the rule of law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language, or religion, by the Charter of the United Nations.

Presently, there are 190 member states. UNESCO is composed of a General Conference made up of member states that meet every two years to determine policies, programs, and budget. The Executive Board, composed of 58 Members who are responsible for executing the organization's program, recommends the appointment of a Director-General. Once selected, the Director General, who along with his/her staff forms the Secretariat, prepares drafts of programs, writes proposals, and formulates budgets. All of these must be approved by the General Conference. There are five program sectors (Education, Communications and Information, Culture, Natural Sciences, and Social and Human Sciences) responsible for enacting UNESCO's programs. In addition, UNESCO maintains relationships with non-governmental organizations (NGOs) and Inter-governmental Organizations (IGOs). As of writing, there are 73 field offices, including one in Sarajevo. Bosnia and Herzegovina became a member of UNESCO on June 2, 1992 after its acceptance into the United Nations on May 22, 1992, UNESCO 1945-2000: A Fact Sheet, at <http://www.unesco.org> (last visited July 12, 2003).

and several non-governmental organizations (NGOs).<sup>163</sup>

UNESCO did not have a palpable presence in Bosnia-Herzegovina for most of the conflict because its activities were commanded from outside the war zone. However, it recognized early on that a cultural crisis was developing. A May 18, 1992 document began to sound alarms. It stated that "unless steps are taken to dissuade the military forces which assault Bosnia-Herzegovina, the world will continue to witness further tragic devastation of mankind's cultural heritage and educational institutions there." It is certain that the organization was aware that cultural "devastation" had already occurred and that it would not stop unless there was interference. To answer this crisis, an Executive Board meeting later that month was called to discuss the actions to be taken by UNESCO.<sup>164</sup> The 139<sup>th</sup> Session of the Executive Board also "invited" the Director-General to send a mission to assess the damage to culture in Bosnia-Herzegovina and to determine the feasibility of sending assistance.<sup>165</sup> The Director-General communicated this decision to Slobodan Milosevic, and "assured him that he would spare no effort to implement [a mission]."<sup>166</sup> However, there is no doubt that effort was spared. The fact that UNESCO would not forcefully interfere was certainly not lost on Milosevic. This report also notes that the Secretary-General made a request of the Commander of the United Nations Protection Force to facilitate a UNESCO mission to

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163. *The Situation of the Cultural and Architectural Heritage and of Educational and Cultural Institutions in Bosnia and Herzegovina*, UNESCO Exec. Bd., 147th Sess., Annex, Prov. Agenda Item 7.5, at 5, UNESCO Doc. 147 EX/51, 28 C/45 Annex (1995).

164. *The Situation of the Cultural and Architectural Heritage and of Educational and Cultural Institutions in Bosnia and Herzegovina*, UNESCO Exec. Bd., 139th Sess., Prov. Agenda Item 7.5, at 2, UNESCO Doc. 139 EX/33 (1992).

165. *Decisions Adopted by the Executive Board at Its 139th Session*, UNESCO Exec. Bd., Decision No. 7.5, at 32, UNESCO Doc. 139 EX/Decisions (1992).

166. *Report by the Director-General on the Implementation of 139 EX/Decision 7.5*, UNESCO Exec. Bd., 140th Sess., Prov. Agenda Item 8.4, at 1, UNESCO Doc. 140 EX/25 (1992).

Bosnia-Herzegovina. He did not think that the situation would allow for a mission in the “immediate future.”<sup>167</sup>

By May 1993, approximately one year after it was called for, a mission still had not been sent. While there seemed to be more movement in the field of education and media projects, UNESCO’s cultural activities at this time were limited to sponsoring a roundtable in Paris in which intellectuals, artists, and religious leaders discussed the future of the former Yugoslavia.<sup>168</sup> In 1993, the organization professed “grave concern” while “strongly condemning” those who commit acts against culture.<sup>169</sup>

In a June 1993 letter to Dr. Colin Kaiser, Sejidalija Mustafic, the Director of the Institute for the Protection of the Cultural-Historical and Natural Heritage of Bosnia and Herzegovina, writes that:

Our institute regularly informed UNESCO and other international organizations dealing with the problem of destroying and ruining cultural heritage in Bosnia and Herzegovina from the beginning of the aggression in April 1992, on the basis of data collected in the last year. However, we have not received any answer up to now. Maybe, there are some problems of communication blockades (*sic.*), but in any case our institute can be contacted through the government or its ministries.<sup>170</sup>

In their June 1993 trip to Sarajevo, fact-finders from the ECMM found that institutions in Sarajevo wanted a special UNESCO

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167. *Id.* at 2. It is unclear from the text of this document if “he” refers to the Commander or the Secretary-General.

168. *Report by the Director-General on the Implementation of 140 EX/Decision 8.4*, UNESCO Exec. Bd., 141 Sess., Prov. Agenda Item 9.3, at 3, UNESCO Doc. 141 EX/31 (1993).

169. *The Situation of the Cultural and Architectural Heritage and of Educational and Cultural Institutions in Bosnia and Herzegovina*, UNESCO Gen. Conf., 27th Sess., Agenda Item 16.3, at 2, UNESCO Doc. 27 C/134 (1993).

170. EUR. PARL. ASSEMB. Doc. No. 6904, *supra* note 102, App. A, at 10.

mission in order to “obtain reliable information from occupied areas, to help save what is remaining, particularly in Sarajevo, and to help Bosnian experts to expand their expertise by means of technical advice from outside.”<sup>171</sup> It was noted in this report that Mustafic “begged” the Council of Europe representatives to try to find a way to get UNESCO’s General Director to visit the city. He could not come because UN Secretary-General Boutros Boutros-Ghali had said that “they did not have convenient circumstances” to arrange a visit to Sarajevo.<sup>172</sup> Unfortunately, there are rarely “convenient circumstances” in war. While waiting to send a mission to Sarajevo, UNESCO was working with the UN Commission of Experts on having attacks on cultural heritage classified as war crimes.<sup>173</sup>

The fact-finding missions that were sent through the Council of Europe were inevitably asked the obvious question: “Why does the United Nations High Commission for Refugees (UNHCR) not help?” There were several main reasons:

Cost: it is known to the UNHCR how many millions of dollars it costs to keep Sarajevo going. Additional efforts to help Sarajevo’s cultural heritage in more positive ways are bound to raise those sums; heavy manpower: it is generally believed it would take more United Nations soldiers than anyone wants to provide. In most of Europe they do not understand the fierceness of hatred being expressed here. This tends to make people stand back.<sup>174</sup>

UNESCO reports frequently asserted that “destruction of the religious and secular heritage of Bosnia and Herzegovina (had)

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171. *Id.*, App. B, at 20.

172. *Id.* at 30.

173. *Report by the Director-General on the Implementation of 141 EX/Decision 9.3*, UNESCO Exec. Bd., 142nd Sess., Prov. Agenda Item 9.2, at 2, UNESCO Doc. 142 EX/38 (1993).

The Commission of Experts was established in 1992 by Security Council Resolution 780.

174. EUR. PARL. ASSEMB. Doc. No. 6904, *supra* note 102, at 31.

turned into a policy of cultural cleansing . . . In this war the symbols of unity are targeted along with the symbols of cultural specificity.”<sup>175</sup> Given the scale and nature of the destruction, UNESCO itself pointed out the discrepancy between its mission and its actions. An April 1994 document says:

the international community may expect from UNESCO, as the leading competent United Nations organization in the field of the preservation and revival of the cultural heritage, to launch an international campaign to safeguard historical and archaeological properties in Bosnia and Herzegovina. However, the provisions of resolution 11.4 of the twenty-fourth session of the General Conference and the guidelines in the Medium-term Plan for 1990 – 1995 and in the Strategy for the International Safeguarding Campaign Programme, envisage a policy of not embarking upon additional international campaigns.<sup>176</sup>

Instead of acting with the urgency that the wartime situation required, UNESCO itself had to look to other international organizations for help. While it still planned on conducting the mission first called for in 1992,<sup>177</sup> UNESCO was limited to developing recommendations, like the preparation of restoration and reconstruction projects, for other organizations to carry out.<sup>178</sup> While they were planning on eventually coordinating restoration work, UNESCO acted as a clearinghouse during the War. Project proposals were passed along to potentially interested donors.<sup>179</sup> This allowed for a flexible, but highly decentralized, system. When fighting decreased somewhat in the first half of 1994,

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175. *The Situation of the Cultural and Architectural Heritage and of Educational and Cultural Institutions in Bosnia and Herzegovina*, UNESCO Exec. Bd., 144th Sess., Prov. Agenda Item 7.3, at 2, UNESCO Doc. 144 EX/34 (1994) [hereinafter UNESCO Doc. 144 EX/34].

176. *Id.*

177. See UNESCO Exec. Bd., 139 EX/Decisions, *supra* note 165.

178. UNESCO Doc. 144 EX/34, *supra* note 175, at 2.

179. Eur. Parl. Assemb. Doc. No. 7133, *supra* note 22, at Sec. C.

UNESCO was finally able to send missions into the area. The idea of opening a UNESCO field office in Sarajevo was discussed in a May 3, 1994 meeting with Bosnian government officials.<sup>180</sup> A set of priorities for the UNESCO office was established which included rehabilitation programs, dispatching emergency conservation supplies, the organization of training workshops for specialists, and the sponsorship of media events to draw attention to the organization's efforts to protect Bosnia-Herzegovina's heritage.<sup>181</sup>

In the middle of 1994, the Director-General's Special Adviser to the former Yugoslavia traveled to Sarajevo and Mostar to assess the damage. During this visit, the Minister of Education and Culture expressed the government's wish that UNESCO and the Council of Europe would focus their energies on protecting the culture of Bosnia-Herzegovina (as a whole) and restore monuments of "great symbolic value."<sup>182</sup> Beginning in April 1994, UNESCO and UNPROFOR sponsored a "cultural airlift" that allowed for cultural exchanges of artists, researchers, and scientists to and from Sarajevo.<sup>183</sup> In March 1994, it should be noted, the European Community Monitoring Mission (ECMM) began to monitor cultural heritage as a matter of Standard Operating Procedure (SOP). This arrangement allowed the ECMM to gather information on the cultural heritage and pass it on to local religious, political, and heritage authorities.<sup>184</sup> Unlike UNPROFOR, the ECMM was willing to facilitate the safe travel

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180. This office opened in September 1994. Before this time, it seems that there was only a UNESCO representative in the region. *The Situation of the Cultural and Architectural Heritage as well as of Educational and Cultural Institutions in Bosnia and Herzegovina*, UNESCO Exec. Bd., 146th Sess., Prov. Agenda Item 7.1, at 42, UNESCO Doc. 146 EX/32 (1995).

181. *The Situation of the Cultural and Architectural Heritage as well as of Educational and Cultural Institutions in Bosnia and Herzegovina*, UNESCO Exec. Bd., 145<sup>th</sup> Sess., Prov. Agenda Item 8.2, at 4-5, UNESCO Doc. 145 EX/36 (1994).

182. *Id.* at 2-3.

183. *Id.* at 3. A short recap of UNESCO's actions can be found on pages 42-43 of this report.

184. Eur. Parl. Assemb., Doc. No. 7133, *supra* note 105, at Sec. A.

of consultants gathering information around the country. The ECMM was the only international organization that attempted to monitor the heritage in the former Yugoslavia during the conflict.<sup>185</sup>

UNESCO was most active during the last months of the war. In May 1995, it was reported that two subcontracts had been secured for emergency repairs to the National Museum and other city monuments. Financial support for a training workshop in restoration was provided with the assistance of the Council of Europe. Donations of material and equipment were being sent to several cultural institutions.<sup>186</sup> In October 1995, an agreement was made to reopen the Sarajevo field office, which had closed for safety reasons, and re-establish a UNESCO presence in the region. In an October 28, 1995 report of the General Conference, the Executive Board made requests to the Director-General to provide technical and financial aid to publish collected information on the damage to the cultural heritage in Bosnia-Herzegovina, in addition to providing "moral and financial support" to cultural activities.<sup>187</sup>

Additional activities at the end of 1995 included preparing files necessary to nominate Mostar and Sarajevo to the World Heritage List, organizing programs for artists in collaboration with the German-Bosnian Society, providing assistance for the most urgent repairs on the National and University Library, the National

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185. *Tenth Information Report on War Damage to the Cultural Heritage in Croatia and Bosnia-Herzegovina*, EUR. PARL. ASSEMB. Doc. No. 7740, Sec. 1 (1997), at

<http://assembly.coe.int/Main.asp?link=http%3A%2F%2Fassembly.coe.int%2FDocuments%2FWorkingDocs%2FDoc97%2FEDOC7740.htm>. To facilitate finding these sources in the future, Council of Europe documents that were accessed from the Internet will give the section number, rather than the page reference.

186. *The Situation of the Cultural and Architectural Heritage and of Educational and Cultural Institutions in Bosnia and Herzegovina*, UNESCO Exec. Bd., 146th Sess., Prov. Agenda Item 9.3, at 3-4, UNESO Doc. 146 EX/46 (1995).

187. *The Situation of the Cultural and Architectural Heritage and Educational and Cultural Institutions in Bosnia and Herzegovina*, UNESCO Gen. Conf., 28th Sess., at 2, UNESCO Doc. 28 C/45 (1995).

Theater, the Historical Museum, the Academy of Fine Arts, the National Museum, and the Music Academy, delivering supplies and materials into Sarajevo, and beginning to look into violations of the 1954 Hague Convention.<sup>188</sup>

UNESCO is charged with the protection of cultural property in its mission and its constitution. Therefore, its failure to intervene on behalf of culture is far less excusable than the inaction of other, smaller international organizations. In Article 23 of the 1954 Hague Convention, it is stated that High Contracting Parties can approach UNESCO for help and the organization "shall accord such assistance within the limits fixed by its program and by its resources."<sup>189</sup> UNESCO can do little in the way of assistance without the support of member states and the United Nations hierarchy. Not intervening or offering assistance when approached seems to be a breach of both the mission of UNESCO and the spirit (though not the letter, because resources were not available) of the Hague Convention. Because it is an international organization subject to the political pressures of its member states, it cannot act as independently as a private organization like the Red Cross can. It is clear from the actions of the belligerent parties in this case that there was little fear that UNESCO would exert pressure on them to cease their destruction.

## VI. ACTIONS OF INTERNATIONAL ORGANIZATIONS

There is an "astonishing lack of will on the part of the international community with respect to the defense of the cultural heritage of Croatia and Bosnia-Herzegovina or even to imagining what its future could be when the fighting stops."<sup>190</sup>

In interviews, cultural leaders in Sarajevo made it clear that they believed that the international community, and the world at large,

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188. *The Situation of the Cultural and Architectural Heritage and of Educational and Cultural Institutions in Bosnia and Herzegovina*, UNESCO Exec. Bd., 146th Sess., Annex, Prov. Agenda Item 8.12, at 7-8, UNESCO Doc. 147 EX/51, 28 C/45 Annex (1995).

189. 1954 Hague Convention, *supra* note 5, 249 U.N.T.S. at art. 23.1.

190. EUR. PARL. ASSEMB. Doc. 6904., *supra* note 102, at 9.



did not care about their plight and that psychological support would have made a significant difference in validating the work that they were risking their lives to do. With a few notable exceptions like the Council of Europe Monitoring Mission and the Bosnia-Herzegovina Heritage Rescue Committee, the aid provided by international organizations was reactive, not proactive. It focused on rehabilitating severely damaged and well-known sites, such as Stari Most in Mostar (Herzegovina) and the historical center of Dubrovnik, Croatia. As stated in a Council of Europe report, “international cultural organizations are not equipped – in the widest sense of the term – for functioning in wartime.”<sup>191</sup> The most significant problem is that there is not an infrastructure in place or the competence available to address the needs of this type of very difficult and politically sensitive situation. During the Balkan Wars, several international organizations were notable for their involvement.<sup>192</sup> However, taken together, these efforts are a hodgepodge and do not necessarily complement each other in their effectiveness. The lack of an oversight structure for outside aid in the former Yugoslavia led to the appearance of ‘carpet-baggers’—people who came to “help” for their own enrichment.<sup>193</sup>

Legitimate international organizations faced two daunting challenges to operating in the area during the war: attaining accurate information regarding the extent of the damage and guaranteeing safety for personnel. Amassing reliable information was particularly difficult in the early period of the War after the communications infrastructure was destroyed. Outside

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191. EUR. PARL. ASSEMB., Doc. 6756, *supra* note 7, at 31.

192. For example, the ARCH Foundation (Switzerland) developed a mobile conservation center and stressed the importance of practical aid while the war was ongoing. The Bosnia-Herzegovina Heritage Rescue UK was critical in compiling information on damage to cultural sites. The Society for the Protection of Ancient Buildings (UK) sponsored an initiative called “Operation Tarpaulin” for roofing supplies and provided a pamphlet on “First Aid Repair to War-Damaged Buildings.” The World Monuments Fund (US) published articles on cultural damage. See Colin Kaiser, *Second Information Report War Damage to the Cultural Heritage in Croatia and Bosnia-Herzegovina*, EUR. PARL. ASSEMB. Doc. No. 6869, *supra* note 121, at 18-27.

193. *Id.* at 26-28.

organizations were frequently forced to rely on local sources of questionable reliability. The information that was received was often not available for outside verification because of the impossibility of accessing the sites.<sup>194</sup>

Compounding these difficulties was the fact that the media did very little to publicize the destruction of the cultural heritage in Bosnia-Herzegovina. According to Kaiser, “the foreign media were certainly of no effectiveness during the Balkan Wars with respect to the protection of cultural heritage.”<sup>195</sup> This lack of attention to the critical situation in Bosnia contrasts with the flood of activity in response to the shelling of Dubrovnik in Croatia. Shortly after the attack on this city, UNESCO put forth \$200,000 and the World Heritage Committee donated \$50,000.<sup>196</sup> The same expert aid and financial support was absent from Bosnia during most of the War.

The second major area of concern was safety, especially during travel. As mentioned earlier, even UNESCO was forced to place a moratorium on missions to Bosnia from the beginning of hostilities in 1992 until the middle of 1994.<sup>197</sup> The absence of meaningful international assistance was duly noted by cultural organizations. Had they been in the war zone, neutral outside observers could have confirmed damage reports, performed some degree of arbitration between opposing forces, and advocated the preservation of culture.

## VII. CONCLUSIONS

It was hoped that, after looking at the experience of protecting cultural property in a case like Sarajevo, that there would be a clear indication of what must be done to stop such destruction next time. And, in fact, what needs to happen is obvious. A “Golden Rule” for cultural heritage must be adopted: “Do unto other’s culture as you’d have done unto yours.” Of course, it is not

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194. EUR. PARL. ASSEMB. Doc. 6756, *supra* note 7, at 32.

195. E-mail from Colin Kaiser, *supra* note 8.

196. EUR. PARL. ASSEMB. Doc. 6869, *supra* note 192, at 18.

197. EUR. PARL. ASSEMB. Doc. 6756, *supra* note 7, at 31.

realistic to expect this to happen because “people fighting wars are psychologically in very tight boxes: they perceive only the present and not the future.”<sup>198</sup> Although it is unrealistic to expect that no cultural property will be purposely destroyed during a conflict, there is no doubt that more can be done to preserve it. If the international community asserts that cultural property belongs to all humankind and nothing is done to protect it, then all are guilty of neglect and inaction. Each conflict is different, but the needs of the heritage are generally the same. There are simple, and not necessarily expensive, actions that could make a significant difference. The following recommendations are examples of improvements that can practicably be made considering the current reality of protection.

### *A. Recommendations*

At the present time the international community seems to be falling back on routine notions of international cultural cooperation without being able to come to grips with the size and significance of the disaster that continues to spread.<sup>199</sup>

#### *1. Legal Protection of Cultural Property*

“The effectiveness of international law ultimately depends on the principle of universal acceptance.”<sup>200</sup> If one side of a conflict is not a State Party to the Convention, it is essentially useless. For this reason, it is necessary to encourage as many nations as possible to accede to the Hague Convention. As of the summer of 2003, 105 nations have ratified the Convention. Although this is a significant number, it is still limited, particularly if one considers that the United States and the United Kingdom have not done so.<sup>201</sup>

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198. E-mail from Colin Kaiser, *supra* note 8.

199. EUR. PARL. ASSEMB. Doc. 6756, *supra* note 7, at 10.

200. Boylan, *supra* note 17, at 8.

201. The United States is a signatory of the 1954 Hague Convention. However, ratification was delayed because of Cold War concerns about being bound to the Convention in the event of a nuclear war. President Clinton

In addition, many Contracting Parties have made little effort to educate their citizens about the importance – much less the substance – of the 1954 Hague Convention. It does little good to ratify the agreement without communicating the ideas conveyed by it to the public.<sup>202</sup>

So far, the 1954 Hague Convention has largely served a symbolic purpose. It affirms that the international community, in theory, accepts the universal value of cultural heritage and its importance to national identity. On the practical level, though, the Convention has been ineffective. One reason for this is that the legal protections currently in place are not designed to address the realities of modern-day warfare. Now terrorist attacks, wars of liberation, and guerilla actions are more common than traditionally envisioned conflicts like World War II. In these situations, the rule of law cannot realistically be expected to prevail, particularly if there is no state to be held accountable. If applied to the situations for which it was intended, the Hague Convention likely would make a difference in the level of destruction. It is now necessary to consider how to encompass these more modern types of conflict into international law.

Whether the 1999 Second Protocol, which will take effect in March 2004,<sup>203</sup> will brace some of the Convention's weaknesses remains to be seen. It does clarify the vague concepts of "peacetime preparation," "Special Protection," and "military necessity" that were so ambiguous in the original Convention. With more concrete definitions of these ideas, the excuse of confusion will be less available. The 1999 Second Protocol also "develops humanitarian law by defining serious violations and by extending the scope of application to non-international conflicts."<sup>204</sup> In addition, it expands the jurisdictional reach of the original Convention by specifying that violations will be subject to

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forwarded the Convention to the Senate with a recommendation for ratification in 1999. It is still waiting in committee. See Colwell-Chantaphonh & Piper, *supra* note 9.

202. Boylan, *supra* note 17, at 43.

203. See *supra* note 77.

204. Henckaerts, *supra* note 78.

penalties under relevant international law.<sup>205</sup>

However, the Second Protocol will make little difference in cultural property protection if enforcement and implementation continue to remain such low priorities. First, practical steps for strengthening the reach of the Hague Convention can be taken, including communicating its importance to the public and cultural professionals, as well as funding peacetime preparation. To make the preparation process less daunting, UNESCO should inform its member states about the expectations and requirements of the Hague Convention and the Second Protocol. Implementation efforts must be communicated and closely monitored. This process could be moved along with the aid of an advisory committee, like the Committee of the Blue Shield.

While little was done in the legal realm to protect the cultural heritage during the Balkan Wars, there are some promising post-conflict developments. Charges have been filed against Slobodan Milosevic and the commanders of the military units that destroyed the historical center of Dubrovnik.<sup>206</sup> The enforcement of the legal regulations concerning cultural property sends a message that this type of action will not go unpunished – at least in the most egregious cases.

## 2. *Linking Cultural and Humanitarian Aid*

The argument should be made more strongly that cultural aid is an extension of humanitarian assistance. “Taking part in a war is a humiliating, soul-destroying experience, even if you are pretty sure of your cause.”<sup>207</sup> Protecting the cultural symbols of a people can give them psychological and emotional strength, and serves as a form of resistance.

To implement this link, “the protection of the cultural heritage should always be clearly included in the tasks of UN Peace-

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205. Second Protocol to the 1954 Hague Convention, *supra* note 81, at art. 16.

206. For updates on these criminal proceedings, see <http://www.icty.org>.

207. E-mail from Colin Kaiser, *supra* note 7.

Keeping Missions as part of humanitarian aid.”<sup>208</sup> Peacekeeping forces and humanitarian aid organizations can also collaborate with the cultural sector within strict criteria: evacuation of movable property in critical situations, emergency stabilization of dangerous structures, and protection and weatherproofing of damaged structures.<sup>209</sup> “Very operational organizations (UNHCR, its implementing partners, and international military forces with engineering expertise) should help out with this kind of assistance, with advice from UNESCO or the Blue Shield.”<sup>210</sup> The most urgent needs of cultural organizations are generally the most inexpensive and low-tech forms of protection: plastic sheeting, sand bags, and packing materials. By providing these in advance, damage from the elements will be greatly lessened. While there is often very little foresight into these types of issues, it must be pointed out that prevention is much easier and cheaper than rebuilding and restoration. Once damage occurs, objects are often left to wait for expert attention, which exposes them to even more harm.

### 3. UNESCO

UNESCO is trying to do too much, and thus, ends up doing too little. Not only is it responsible to the cultural community, but also to the scientific, educational, and journalistic ones, as well. In the wars in the former Yugoslavia, the organization was unable to fulfill its mission on behalf of culture. Without the active participation and support of member states, this is unlikely to change. What UNESCO can do, then, is use its network to assist

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208. *Resolution on Information as an Instrument for Protection against War Damages to the Cultural Heritage*, Resolution adopted at an expert meeting convened by the Swedish Central Board of National Antiquities, the Swedish National Commission for UNESCO and ICOMOS Sweden, (June 10, 1994) at [http://www.unesco.org/culture/laws/sweden/html\\_eng/page1.shtml](http://www.unesco.org/culture/laws/sweden/html_eng/page1.shtml) (last visited Dec. 8, 2002). This recommendation, of course, only applies if peacekeepers are present.

209. E-mail from Colin Kaiser, *supra* note 7.

210. *Id.*

organizations that are better equipped and more willing to operate in war zones. Putting pressure on the broader United Nations organization to include cultural heritage monitors on peacekeeping operations should be made a priority because access to accurate information is so critical.<sup>211</sup> It should also push its member states to prepare themselves for any potential disaster by preparing publications.<sup>212</sup> One example would be a handbook of practical and creative solutions for dealing with potential damage during a conflict or natural disaster. This book should build on the experience of cultural workers in past conflicts and the advice of experts in the field. It could be commissioned by a large international organization like UNESCO with input from NGOs and arts professionals.<sup>213</sup> An “expert” database should also be created with the assistance of organizations like ICOM (International Council of Museums), ICCROM (International Center for the Study of Preservation and Restoration of Cultural Property), ICOMOS (International Council on Monuments and Sites), and AAM (American Association of Museums).<sup>214</sup>

UNESCO should prepare a comprehensive database of cultural property to be protected before the outbreak of war, using its existing records and those of the World Heritage Committee. This would make the monitoring of damage much easier. UNESCO can help States compile lists of cultural property that would qualify for inclusion.<sup>215</sup> This list must be shared with warring parties and all UNESCO member states so that the situation can be monitored in a very public way. The argument that the location of important cultural property should be kept secret for security reasons should finally be dismissed. The experience in Bosnia shows that a hostile party already knows where hidden property is, or at the very least, can easily find out. The best hope for saving

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211. Boylan, *supra* note 17, at 135.

212. *Id.* at 128-29.

213. *Id.* at 129.

214. *Id.* at 141-42. Boylan advocates a more prominent role for non-governmental organizations in his *Review*. This is one example of how these organizations can be of more assistance.

215. Toman, *supra* note 15, at 117.

cultural property is to clearly identify and monitor it so that there can be no mistakes or "accidents." New technology, such as the Global Positioning Systems (GPS), can also be helpful in this task.<sup>216</sup> An organization like UNESCO, with its vast network of fellow United Nations organizations is ideally situated to act as both a databank and clearinghouse.

#### 4. The International Community

There are two aspects of international involvement that must be addressed: the actions of international organizations and the more localized efforts of cultural professionals. Both groups can work together to educate the public on the issues involved with cultural destruction, raise awareness of its effects, and develop a brain trust (in association with UNESCO) that is uniquely positioned to deal with these types of challenges. The most crucial step to effective international action is the establishment of a strong, non-governmental organization that has as its mission the specific goal of protecting cultural heritage during emergency situations.<sup>217</sup> Integration is key. The experience in Bosnia clearly shows that organizations within a governmental structure, whether national or international, cannot be as effective in their interactions because of political risks and a perceived lack of neutrality.<sup>218</sup> Furthermore, it is politically difficult for an outside state to get involved in conflicts that are not directly related to the interests of its citizens. The intervention of non-governmental organizations that can more easily navigate tricky political situations is therefore necessary.<sup>219</sup> The growth of the Swedish group, Cultural Heritage Without Borders, should be nurtured and supported so that an infrastructure for this type of action can be put in place.

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216. Parks, *supra* note 21, at 7.

217. This could include both conflict and natural disasters.

218. The exception to this was the Council of Europe, which took tremendous risks to gather information and produce reports on cultural destruction. The organization provided resources and backing to undertake this endeavor, which is not usually the case.

219. See Boylan, *supra* note 17, at 141.



To develop this, the cultural community needs to look to other organizations designed to assist in acute humanitarian disasters. Therefore, the development and strengthening of an organization based on the model of “Doctors Without Borders” would be effective. While it was founded too late (1996) to be of assistance during the war in the former Yugoslavia, a recent positive development in cultural heritage protection is the establishment of the International Committee of the Blue Shield – the “Red Cross of cultural heritage.” This non-governmental organization was developed by ICA (the International Council of Archives), ICOM (International Council of Museums), ICOMOS (International Council on Monuments and Sites), and IFLA (International Federation of Library Associations and Institutions). It took an active role in the development of the Second Protocol to the 1954 Hague Convention and works to respond to the challenges of war and natural disasters with expertise and manpower.

“International organizations usually do not work well together unless there is a strong government to make them coordinate.”<sup>220</sup> The experience in Bosnia shows that a national government that is weak and in chaos will be of little help to cultural organizations. While it would certainly need the blessing and operational assistance of the government, an outside, independent body should take on the task of coordination. The organization charged with protecting cultural property during conflict has quite a task ahead of it. It must ensure the safety of neutral cultural observers, prioritize protection and reconstruction projects, promote expert exchanges, provide disaster relief, coordinate the efforts of various cooperating organizations, and facilitate the flow of accurate information, particularly in the preparation of standardized damage reports. The organization must also be able to collect data and communicate for institutions that do not have phone or electrical service. In addition, it is critical that international relief efforts are not only focused on the best-known sites. The over-concentration of resources on well-known symbols subtracts from the attention given to the smaller organizations and sites that are extremely

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220. E-mail from Colin Kaiser, *supra* note 7.

important to the community.<sup>221</sup>

While cultural and governmental institutions in Bosnia-Herzegovina could have been better prepared and organized, they did not have the means to communicate their situation to the outside world because of the lack of phone and electrical service. This is one area in which international organizations and the media could have been extremely effective. By drawing attention to the situation of cultural organizations, there might not only have been the promise of additional aid, but also the possibility that such notice would have put pressure on belligerent forces.

### 5. Outside Cultural Organizations

It *was* possible to help during the war, and much more should have been done by the international museum community to help museums protect their collections. Museums have perhaps been the worst-assisted (of cultural organizations) by their fellow professionals outside Bosnia of all cultural institutions in the country during the war – musicians, artists, and academics have all received support.<sup>222</sup>

A largely untapped resource in the fight to save the heritage is the large, and generally well-connected, network of cultural professionals throughout the world. Besides providing expert advice, arts professionals and international organizations could launch campaigns to help endangered sites within their own communities. Within every cultural organization is the mission to educate the public. To fulfill this mission, organizations can sponsor programming related to cultural property issues at their institutions. In addition, there is now the ability to use the Internet and professional global connections to educate and advocate. Bringing attention to lesser-known sites is a particularly urgent task. In addition, the Internet could be used as an outside clearinghouse for emergency and reconstruction projects—if its use was well supervised by a central organization.

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221. Eur. Parl. Assemb. Doc. 6904, *supra* note 102, at 9.

222. EUR. PARL. ASSEMB. Doc. 7464, *supra* note 41, at 5.

Most of all, outside cultural professionals can provide support for colleagues confronting seemingly impossible situations. All of the cultural leaders interviewed stated that psychological support from the outside world would have made a significant emotional difference for them. Cultural professionals in war zones are often completely cut-off from professional networks because of communication difficulties. As a Council of Europe report notes, "On a national and regional level, a community of knowledge has been fragmented whose shattering will have serious consequences for research and scholarship in the region unless relationships are rebuilt."<sup>223</sup> After a conflict, making contact and rebuilding those networks will help in normalizing the postwar situation and ending the isolation. Just one example of how this can be done is by collecting professional journals so that cultural professionals can catch-up with the latest developments after hostilities have ended.<sup>224</sup>

#### *6. Staff of Cultural Organizations*

Much of the real preservation of cultural property is done "on the ground" by institutional employees. It is critical that they are prepared for the psychological and professional challenges that will need to be faced during armed conflict. While UNESCO and national governments can provide training materials, it is essential that cultural organizations take the initiative to prepare themselves. The experience of cultural workers in Sarajevo proves that no one believes that this type of situation could happen. Indeed, the biggest block to peacetime preparation is psychological. Some of the interview subjects said that an advanced plan would have made little difference because conditions were not in place to allow them to execute it. However, it must be argued that thinking about and preparing an emergency plan can do no harm. There will be realities that must be faced. Staff members of cultural institutions operating in a war situation are likely going to be very dedicated to

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223. EUR. PARL. ASSEMB. Doc. 7740, *supra* note 171, at 19.

224. EUR. PARL. ASSEMB. Doc. 7464, *supra* note 171, at Sec. 5.

their work as preserving the heritage is seen as a form of resistance. Unfortunately, it is inevitable that there will be a loss of staff (through access difficulties, illness, death, fleeing, etc.) during a conflict. There will likely not be funds available for salaries or basic projects. Institutions will need to depend on the dedication of volunteers.

Even if a wartime situation is not conceivable, much of the damage that occurs during a conflict is the result of very imaginable events – flood, fire, or other natural disaster. According to Boylan's *Review of the Hague Convention*:

In terms of their impact on buildings and collections a high proportion of the actual damage that occurs in war is not very different from that resulting from natural or civil disasters. Direct parallels between the effects of war damage and those of civil or natural disasters include: fire, structural collapse of roofs and walls, ingress of water whether through holes in roofs or from damaged building services, interruption of essential services, especially gas (leading to fire and explosion and loss of heating), surface drainage (resulting in flooding), and electricity (with consequent shut-down of building services, such as air conditioning, security, and information systems), and criminal acts against cultural property, such as casual theft, more extensive and organized looting and vandalism.<sup>225</sup>

Considering the types of issues beforehand can be extremely helpful for those who might, unfortunately, have to care for collections under these circumstances. At the very least, a discussion about proper storage and security must take place. Collections will likely need to stay in storage during a conflict and for some time afterwards while repairs are made. For this reason, adequate conditions are essential. Once in storage, collections will be more vulnerable to moisture, ventilation, and temperature problems—especially if the storage is temporary. These concerns

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225. Boylan, *supra* note 17, at 70.

need to be thought out ahead of time.

As the experience of cultural organizations in Sarajevo showed, high tech alarm systems cannot be counted on to function during times of conflict or natural disaster. If the galleries and storage are not adequately protected, it is almost certain that there will be theft and looting. Real security will need to be provided by real people. The formation of the Commission for the Protection of the Cultural Heritage is a unique and extremely effective example of how special security forces can be developed. Besides providing security at no cost to cultural institutions, this service saved the lives of hundreds who would otherwise have been sent into a combat situation, and allowed them to participate in resistance activities that were suited to their particular competence.

The system of cultural property protection must continue to evolve to confront present realities. However, many of the challenges faced during war will remain the same in the future. Focusing on very practical aspects of protection, such as technical support and information gathering, will ensure that cultural property is safeguarded until the international legal instruments are better enforced and more effective.

The experience of Sarajevo during the War proved that cultural heritage represented much more than artistic achievement. Instead, it was the expression of a tolerant, multi-ethnic tradition that belligerent troops felt needed to be destroyed in order to envision a mono-ethnic future. In this way, the destruction of cultural property was an aspect of the larger ethnic cleansing campaign. During the War, the elimination of the Muslims "included an attempt to erase any memory of their linkage to the land, not least as a means to help ensure that ethnic cleansing was irreversible."<sup>226</sup> Preserving the past is an act of resistance for those faced with the threat of "elimination," and a rebuke to those who wish to rewrite history. It is really about protecting people by preserving their connections and roots. In essence, cultural property protection is a way of declaring that the highest human

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226. NORMAN CIGAR, GENOCIDE IN BOSNIA: THE POLICY OF "ETHNIC CLEANSING," 48 (1995).

values of life and respect cannot be wiped away – even with artillery shells.

*Megan Kossiakoff\**

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\* Currently a student at the DePaul University College of Law, the author received her BA in Russian and Eastern European History from Stanford University in 1998, and her MA in Arts Administration from the School of the Art Institute of Chicago in 2003. The idea for this article came when the author was working as an exhibitions researcher at the Spertus Museum and had to obtain permission to use an image of the Sarajevo Haggadah from the National Museum of Bosnia and Herzegovina. Fascinated with the story of how the Haggadah was saved during the War in the former Yugoslavia, she decided to travel to Sarajevo and interview museum directors and cultural leaders. This article, which is based on a previously-completed Master's Thesis, is the result of her research. The author would like to thank Maureen Collins, Michael Dorf, Jacob Finci, Dr. Patty Gerstenblith, Meliha Husedzinovic, Colin Kaiser, Muhiba Kaljanac, Anthony and Susan Kossiakoff, Barry Szczesny, Christine Weber, Nermina Zildzo, and Jaime Davids for their input and encouragement during the writing of this article. This study would not have been possible without the help of Asja Mandic of ARS Aevi who felt this project important enough to arrange interviews, provide interpretation, and smuggle books out of libraries.

